

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





JOINT APPENDIX

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,682

LOCAL 152, affiliated with the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,  
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 18,734

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

AMERICAN COMPRESSED STEEL CORPORATION,

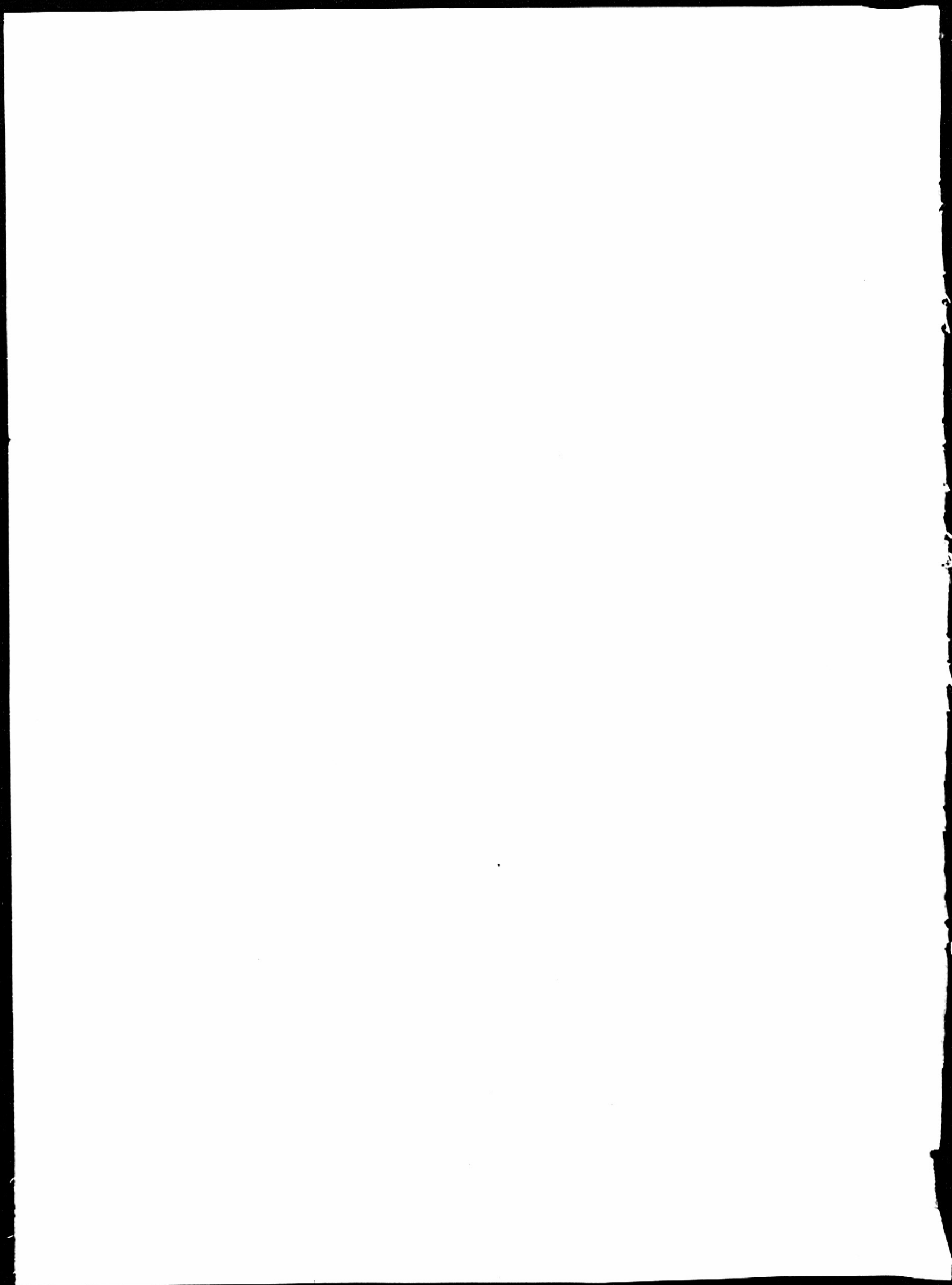
Respondent.

On Petition to Review and Set Aside and on  
Cross Petition to Enforce an Order of the  
National Labor Relations Board

United States Court of Appeals  
for the District of Columbia Circuit

FILED OCT 22 1964

*Nathan J. Paulson*  
CLERK



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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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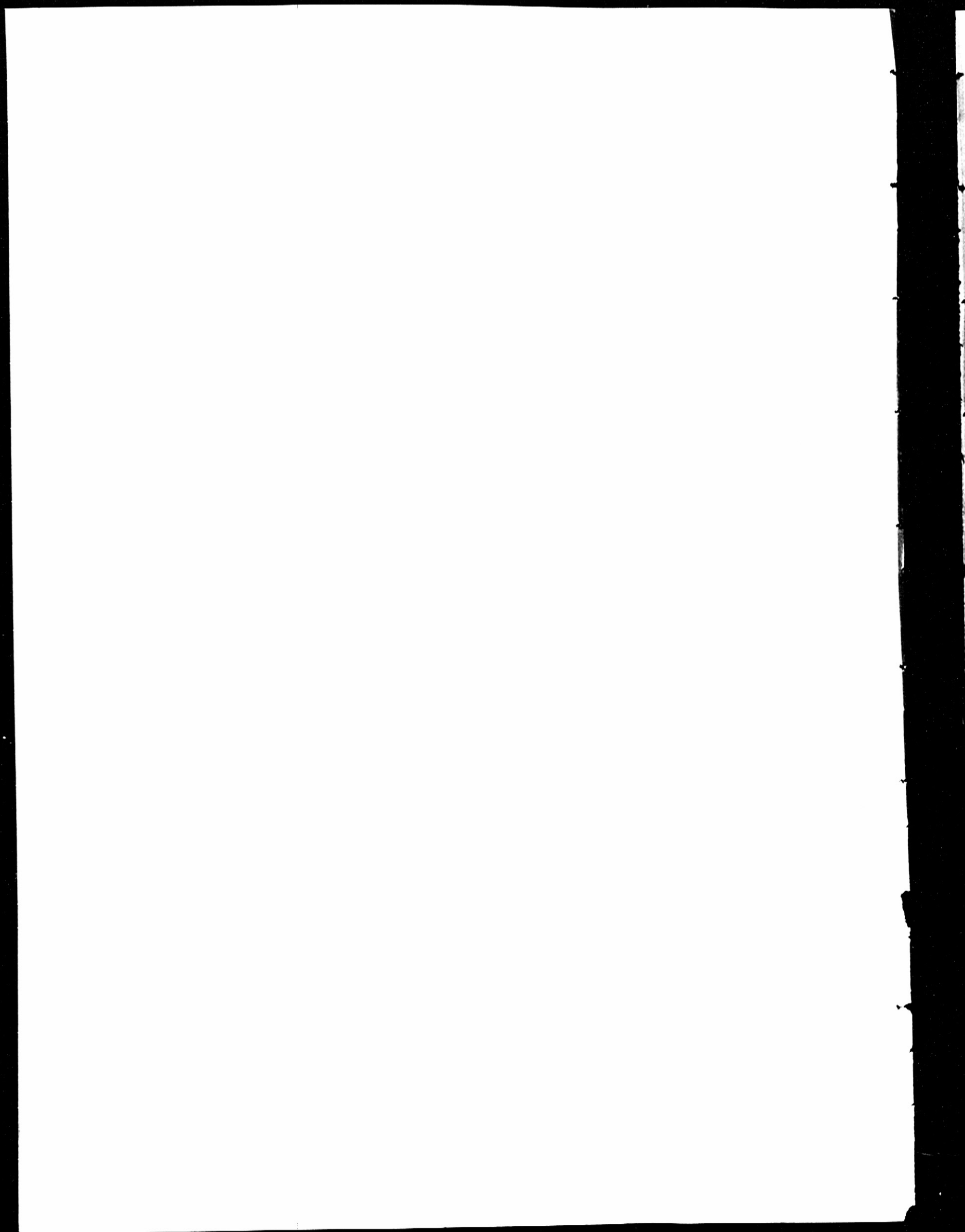
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On Petition to Review and Set Aside and on  
Cross Petition to Enforce an Order of the  
National Labor Relations Board

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JOINT APPENDIX

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(i)

INDEX

	<u>Page</u>
Complaint and Notice of Hearing, dated September 20, 1963 . . . . .	1
Answer of Respondent, dated October 15, 1963 . . . . .	6
Excerpts from Transcript of Proceedings, Before the National Labor Relations Board, Ninth Region, November 12, 1963 . . . . .	7
<u>Witnesses:</u>	<u>Tr. Page</u>
James Felder Direct . . . . .	43 7
Johnny H. Greer Direct . . . . .	50 8
Cross . . . . .	85 29
Redirect . . . . .	174 39
Recross . . . . .	179 40
Robert Baker Direct . . . . .	184 42
Cross . . . . .	207 56
Recross . . . . .	225 56
Sylvester Vaughn - November 13, 1963 Direct . . . . .	229 57
Cross . . . . .	247 61
James Felder - November 14, 1963 Cross . . . . .	330 62
Alden C. Hibbard Direct . . . . .	368 64
Cross . . . . .	379 65
Herbert I. Byer Direct . . . . .	400 67
Cross . . . . .	469 77
Redirect . . . . .	510 81
Abe Byer Direct . . . . .	513 82
Exhibit A -- Note from Dr. R. Kenneth Jones, dated September 19, 1963 . . . . .	84
Trial Examiner's Decision . . . . .	85
Appendix -- Notice to All Employees. . . . .	103

(ii)

	<u>Page</u>
General Counsel's Limited Exceptions to the Trial Examiner's Decision dated February 12, 1964 . . . . .	104
Decision and Order, Released May 14, 1964 . . . . .	105
Appendix — Notice to All Employees . . . . .	108
Petition to Review and Set Aside an Order of the National Labor Relations Board, Filed June 8, 1964 . . . . .	110
Letter from Herbert S. Thatcher, Esq. to Mr. Nathan J. Paulson, Clerk, United States Court of Appeals for the District of Columbia, dated September 1, 1964 . . . . .	113
Prehearing Conference Stipulation . . . . .	114
Prehearing Order, Dated July 24, 1964 . . . . .	116

JOINT APPENDIX

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
NINTH REGION

In the Matter of	)	
	)	
AMERICAN COMPRESSED	)	
STEEL CORPORATION	)	
	)	
and	)	Case No. 9-CA-2932
	)	
INTERNATIONAL BROTHERHOOD	)	
OF TEAMSTERS, CHAUFFEURS,	)	
WAREHOUSEMEN AND HELPERS	)	
OF AMERICA	)	

COMPLAINT  
AND  
NOTICE OF HEARING

It having been charged by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, that American Compressed Steel Corporation, herein called Respondent, has engaged in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for the Ninth Region, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge and Amended Charge were filed by the Union on August 7, 1963, and August 14, 1963, respectively, and were served on the Respondent by registered mail on August 8, 1963, and August 16, 1963, respectively.

2. (a) The Respondent, a New Jersey corporation, is engaged in the processing and sale of scrap metal at its place of business in Cincinnati, Ohio.

(b) During the past year, which is a representative period, the Respondent had a direct outflow, in interstate commerce, of goods and products valued in excess of \$50,000, which were shipped directly from its place of business to points outside the State of Ohio.

(c) At all times material to the issues herein, the Respondent is and has been an "employer" as defined in Section 2(2) of the Act, engaged in "commerce" and in operations "affecting commerce" as defined in Sections 2(6) and (7) of the Act, respectively.

3. At all times material to the issues herein, the Union is and has been a labor organization as defined in Section 2(5) of the Act.

4. At all times material to the issues herein, Herbert Byer, Larry Byer, and Marty Goodwin are, and have been, supervisors as defined in Section 2(11) of the Act, and agents of the Respondent acting in its behalf.

5. On or about the dates indicated below, the Respondent at its said place of business, unless otherwise indicated, interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, by:

(a) The conduct of Herbert Byer:

(i) On or about April 5, 1963, in telling an employee that the employee had a card for the Union; that the employee had signed a Union card; that other employees had told Respondent that the employee had signed a Union card; and that the employee was on the losing side.

(ii) On or about April 10, 1963, in questioning an employee regarding the employee's knowledge of union activities; in telling an employee that the Respondent was not going to have a union and that before Respondent had a union it would fire all of the employees that were for the Union; and in accusing an employee of being the leader in the union movement.



(iii) On or about April 20, 1963, in telling an employee that Respondent had never had a union and would never have a union; that the Respondent would close the place before it would have a union; that the Union would not do the employee any good; and that if the Union got in the employee would work less hours and make less money.

(iv) On or about April 22, 1963, in telling an employee that other employees were trying to get a union; that there would never be a union in his place of business and that he would close the doors first; that the said employee was active for the Union on behalf of someone else; that Respondent knew everyone that had signed a card for the Union; that the employee should tell his fellow employees to vote for Respondent; that Respondent could replace any of its employees; and that Respondent would make the employee work so hard that the employee would quit.

(v) On or about April 23, 1963, in harassing an employee by accusing him of talking about the Union to another employee.

(vi) On or about April 27, 1963, in questioning an employee about the Union; in telling an employee to get the other employees together and talk to them about voting the Union out; and in telling an employee that the Respondent would not have a union and would fire every employee suspected of being for the Union.

(vii) On or about June 1963, in making taunting remarks to an employee regarding the Union, to wit: that there was nothing the Union could do if the employee were discharged; that the employee had better get his mind off the Union; by asking the employee if the Union would get him another job if the employee were discharged; and by referring to fellow employees as "your union buddies".

(viii) On or about the middle of July 1963, the exact date being unknown to the Regional Director, in telling an employee that the employee was having trouble since the Union got started and making taunting remarks to an employee not to stand near another employee "because that union business might rub off" on him.

(ix) On or about July 18, 1963, by taunting an employee with questions regarding what the Union could do for the employee; in telling the employee that his hours of work would be reduced if the Union came in; and that he would make the work so hard for the employees that the employees would quit.

(x) On or about July 19, 1963, and on other occasions during July and August 1963, the exact dates being unknown to the Regional Director, in closely following employees and giving the impression of keeping the employees under surveillance to determine their activities on behalf of the Union.

(xi) On or about August 6, 1963, in harassing an employee Union adherent by refusing to allow said employee to go to the rest-room during working hours.

(b) On or about July 22, 1963, in transferring its employee Johnny H. Greer from driving a tractor trailer to a more arduous or less desirable job of picking up tin cans off the dump because of the employee's sympathy for and activity on behalf of the Union.

(c) The conduct of Larry Byer on or about June or July 1963, the exact date being unknown to the Regional Director, in telling an employee that if the Union "got in" the employee would work fewer hours and make less money; in accusing the employee of being the principal one trying to get the Union as the collective bargaining representative of the employees; and in telling the employee that it would do no good to get the Union because the employees would not make any more money and would have to pay union dues.

(d) The conduct of Marty Goodwin on or about April 1963, the exact date being unknown to the Regional Director, in questioning an employee regarding the Union and shortly thereafter in questioning an employee as to what the employee had heard about the Union.

6. On or about July 23, 1963, the Respondent discriminatorily discharged its employee Robert Baker and has since said date refused to re-employ him all because of his sympathies for and activities on behalf of the Union.

7. Since on or about April 5, 1963, the Respondent taunted and harassed its employee Sylvester Vaughn because of his sympathy for and activities on behalf of the Union and thereby made his working conditions so undesirable that he quit his employment on or about August 7, 1963.

8. On July 2, 1963, in Case No. 9-RC-5377, the Regional Director, on behalf of the Board, found that the following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining, to wit:

All production and maintenance employees employed by the Respondent at its place of business in Cincinnati, Ohio, including truck drivers, but excluding the weigher, the cashier, part-time employees, watchman, office clerical employees and all guards, professional employees and supervisors as defined in the Act.

9. On or about April 18, 1963, the Union, as bargaining representative of a majority of the employees in the above-described unit, requested the Respondent to bargain collectively with it as such representative.

10. Since on or about April 18, 1963, the Respondent has refused to recognize and bargain in good faith with the Union and has instead engaged in a course of conduct to undermine the Union's status as the collective bargaining representative of a majority of Respondent's employees by:

(a) Interfering with, restraining, and coercing its employees as alleged above in paragraph 5.

(b) Discriminatorily and constructively discharging employees as alleged above in paragraphs 6 and 7.

11. By the acts and conduct alleged above, Respondent has engaged in and is engaging in unfair labor practices as defined in Section 8(a)(1), (3) and (5) of the Act, affecting "commerce" as defined in Section 2(6) of the Act.

PLEASE TAKE NOTICE that on the 5th day of November, 1963, at 10:00 o'clock in the forenoon, Eastern Standard Time, in the Hearing Room of the National Labor Relations Board, 900 Transit Building, 6 East Fourth Street, Cincinnati, Ohio, a hearing will be conducted before a duly designated Trial Examiner of the Board, on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as an agent of the Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board.

Dated at Cincinnati, Ohio this 20th day of September, 1963.

/s/ John C. Getreu  
Regional Director, National Labor  
Relations Board, Ninth Region  
1200 Transit Building, 6 East Fourth  
Street, Cincinnati, Ohio 45202

---

#### ANSWER OF RESPONDENT

\* \* \* \* \*

9. On or about April 18, 1963, the union made a demand upon the Respondent to bargain with it collectively as a representative of the production and maintenance employees of the Respondent. On said date the union did not represent a majority of the employees of the Respondent within a unit appropriate for the purposes of collective bargaining.

\* \* \* \* \*

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGSBEFORE THE NATIONAL LABOR RELATIONS BOARD  
NINTH REGION

1 In the Matter of: )

AMERICAN COMPRESSED )  
STEEL CORPORATION )

and )

INTERNATIONAL BROTHERHOOD )  
OF TEAMSTERS, CHAUFFEURS, )  
WAREHOUSEMEN AND HELPERS )  
OF AMERICA )

Case No. 9-CA-2932

and )

LOCAL 152, INTERNATIONAL )  
BROTHERHOOD OF TEAMSTERS, )  
CHAUFFEURS, WAREHOUSEMEN )  
AND HELPERS OF AMERICA )

Case No. 9-CA-2968

900 Transit Building  
6 East Fourth Street  
Cincinnati, Ohio

Tuesday, November 12, 1963

Pursuant to notice, the above-entitled matter came on for hearing,  
at 10:00 o'clock a.m.

BEFORE:

FREDERICK U. REEL, Esq. - TRIAL EXAMINER.

\* \* \* \* \*

43

JAMES FELDER

a witness called by and on behalf of the General Counsel, being first duly  
sworn, was examined, and testified as follows:

## DIRECT EXAMINATION

BY MR. BAKER:

Q. State your name and address for the record, please. A. James  
Felder, 3924 Dixon Avenue - that's my home address. 119 West Central  
Parkway is my office address. Organizer for the International Brother-  
hood of Teamsters, Warehousemen, Chauffeurs of America.



44 Q. Are you an organizer for the International or for a particular Local? A. International.

Q. State whether or not you conducted a campaign for organizing employees of the American Compressed Steel. A. Yes, I did.

Q. Will you say when that campaign started? A. That campaign started about the 18th of March, 1963.

\* \* \* \* \*

50

JOHNNY H. GREER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined, and testified as follows:

# DIRECT EXAMINATION

BY MR. BAKER:

Q. Will you state your name and address for the record, please?

A. Johnny H. Greer, 1118 Dayton Street, Cincinnati, Ohio.

Q. Are you presently employed by American Compressed Steel?

A. No.

Q. Have you ever been employed by American Compressed Steel?

A. Yes.

Q. Will you state when you first became an employee of American Compressed Steel? A. January 9, 1949.

Q. Do you recall who hired you when you went to work there?

A. Sam Byer.

Q. And, you worked there how long, Mr. Greer? A. I worked until September 18, 1963.

Q. Approximately fifteen years; is that correct? A. A little over 14; about approximately 15. That is right.

51 Q. What jobs were you hired for when you started at American Compressed Steel? A. Laborer.

Q. As a laborer? A. Right.

Q. Do you recall the wage that you started at? A. Ninety cents per hour.

Q. Did you work as a laborer the entire period of your employment?

A. I worked as a laborer until the latter part of '51 and the first of '52.

Q. Then what job did you get? A. Truck driver.

Q. What sort of truck were you driving, Mr. Greer? A. I was driving a semi - all sorts.

Q. All sorts of trucks? A. Right.

Q. At the time you were discharged, what were you driving, if anything? A. A Tyler truck. Picking up tin cans off the dump.

Q. A Tyler truck? A. That's right. That's what they call it. A Tyler truck.

Q. Would you explain to the Trial Examiner what a Tyler truck is?

A. It's one of those trucks that you take out to the dump and let the box  
52 off and load it with tin cans, and pull it back up against the truck.  
Pull it back up on the bed of the truck.

Q. Am I correct? It's the type that the bed can be set off?

A. Set off and put back on there.

Q. And, you throw one off, get another? A. That's right. Set one down and pick up another and go on.

Q. Was it your job to fill the box up? A. No, it wasn't my job. I'd just get up there and level them down, and the others would fill them up.

Q. Now, level them down. What do you mean by that? A. Well, at places they load them with a crane, and just stack them up there where they fall off into the street. So we have to shove them off and get them down level so they wouldn't fall off in the street.

Q. When you haul them back. A. Yeah.

Q. What sort of tin cans were they, Mr. Greer? A. Some places they were filthy. Some places they weren't.

Q. When you say "filthy", what do you mean? A. Filthy - ketchup, mustard, dead rats.

Q. And, it was your job to get up into the truck with these cans and level them out? A. That's correct.

53 Q. What did you do with this box or load of cans after you got them loaded? A. I took them down to American Compressed Steel and had

them weighed and took them over to the canyard and dumped them the best I could. Pulled them off of the rig, if they didn't dump off.

Q. Did you have to get up in the box? A. Yes, I did.

Q. Was the box closed? A. All but just the back gates.

Q. It has a top on it? A. No, it was open top and the gates open — swing open.

Q. And, how did you get them out of there? A. We would rake them out with a dump. We couldn't dump them all out; in fact, you couldn't dump them all out. The body was all — too long.

MR. KENNEDY, SR: Mr. Trial Examiner, I can't understand the witness. I wonder if you could ask him to speak —

TRIAL EXAMINER: Mr. Greer, speak a little more slowly. You are talking a little fast for Mr. Kennedy, and also for the reporter.

MR. KENNEDY, SR.: I wonder if the reporter will read the last answer.

TRIAL EXAMINER: Could you read the last answer?

54

(The answer was read.)

MR. BAKER: Let me ask the question over again.

TRIAL EXAMINER: All right.

BY MR. BAKER:

Q. How did you unload the cans, Mr. Greer? A. We tried to dump the body; the body was too long —

TRIAL EXAMINER: You mean the back of the truck?

THE WITNESS: It was too long. See the truck bed was too long, and it hit the ground before all the tin cans come out and you got to rake them out with a rake.

BY MR. BAKER:

Q. And, did you help rake them out? A. I raked them out.

Q. That is, the ones you hauled, you raked out. A. That's right.

Q. Is that right? A. Yes.

Q. How long had you been driving this type of truck? A. I'd been driving it since along about August.



Q. Sometime in August? A. Sometime in August.

Q. Now, prior to driving the Tyler truck, since back in 1951 or so, you started driving other trucks. Is that correct? A. That's right.

55 Q. Now, just prior, or the years prior to driving the Tyler truck, what sort of work were you doing then, as a truck driver? A. I was delivering stuff by way of New Albany, Louisville, Dayton, Hamilton - other various places.

MR. KENNEDY, SR.: I can't hear the witness.

TRIAL EXAMINER: Mr. Greer, I'm sorry. I have trouble, too, especially when you're talking about these places that you know so well, but some of us will have to get familiar with this as we go on.

You say you were delivering from New Albany, and where else?

THE WITNESS: Louisville.

TRIAL EXAMINER: And Louisville.

THE WITNESS: And I was picking up scrap from Dayton, and Hamilton, and other various places.

MR. KENNEDY, SR.: Other what?

TRIAL EXAMINER: From Dayton, Hamilton and other various places.

MR. KENNEDY, SR.: Thank you.

BY MR. BAKER:

Q. Did you go as far as Wapakoneta? A. Yes, sir, I did.

Q. Now, Mr. Greer, will you tell the Trial Examiner what sort of things you were picking up when you were going to Wapakoneta, or Louisville, or New Albany, or Hamilton? What was it you were getting?

56 A. When I was going to Louisville, I would take a load of ingots and go over to American Compressed Steel - I guess the same place - and pick up a load of radiators and bring it back.

Q. Automobile radiators? A. That's right.

Q. Well, now, what about out to Evendale or someplace? A. Well, G.E.?

Q. Yes. A. I'd go out to G.E. and pick up turns, machinery, tool bit dials, tool dials.

Q. You say turnings? A. Turnings.

Q. Metal turnings off of lathes? A. That's right. Stainless steel turnings and stuff like that.

Q. Was any of this stuff filthy? A. No, sir. They loaded it.

Q. They loaded it for you? A. Yes, sir.

Q. And, you just went to and fro? A. That's right. Drop one trailer and pick up the other.

Q. I see. You take a trailer out, leave it, it would be loaded, and you would pick up a loaded trailer and bring it back. A. That's right.

\* \* \* \* \*

57 Q. Was this the same box that you hauled out to the cans? A. That's right. One of them can boxes, and I was holding my hand up like this when Herb hit me.

Q. Well, now, let's see if I understand. Did you have your back to the opening of the door? A. That's right. My back was to the back of the truck, and I was holding the panel up like this. And, the opening was back here, when he hit me on the arm.

Q. Now, what was the welder doing at this time? A. He had his hood up, spotting the piece up on the top to weld it.

Q. You were repairing this box. Is that it? A. That's right.

58 Q. After you had gotten it repaired, will you state whether or not you would have taken it out to the can dump? A. That's right.

MR. KENNEDY, SR.: What was the question, please?

MR. BAKER: Whether or not after he got the box repaired, whether he would have taken it out to the can dump, and he said he would.

BY MR. BAKER:

Q. Now, you state that Larry hit you —

TRIAL EXAMINER: Wait a minute.

Q. (Continued) Herb. Herb hit you. I'm sorry.

Would you describe in detail now, for the Trial Examiner just what happened and what, if anything, was said at this time? A. After he hit me, he said, "I —

Q. Wait a minute, you're standing — A. Like this, and my hand up, holding the piece up in front of the truck, with the back door open.

Q. All right. I assume that you felt a blow or something on your arm. Is that right? A. That's right. On the back.

Q. And, what did you do then? A. As I turned, he said, "I hope I didn't interrupt your damn conversation."

Q. Well, now he — Was Mr. Herbert Byer standing there beside you? A. That's right. The only three that was there, Herb, and the weld-  
59 er, and me.

Q. Now, what did Mr. Byer do, if anything, at that time? A. Turned and walked off; went to the office.

Q. And what, if anything, did you do? A. I went up to the office and asked him why he hit me. He said he didn't hit me; he might have brushed up against me. I said, just like this, "I'm none of your damn kids. You ain't got no right to hit me."

Q. What did he say to that? A. He told me, "If you're going to leave" — He said, "I'm not going to fire you, but if you're going to leave, don't come back." He followed me down the street.

Q. Did you clock out and leave? A. At 2:17.

Q. What did you do after that? A. I went to the doctor.

Q. You did go to the doctor? A. I did.

Q. Were you examined by the doctor? A. Yeah; I was examined by Dr. Jones.

Q. And what, if anything, did the doctor tell you?

MR. KENNEDY, SR.: We'll object.

TRIAL EXAMINER: Overruled. You may answer.

THE WITNESS: He told me my arm was bruised, to take heat treatments on it, and put some witch hazel and Ben Gay on it.

60

BY MR. BAKER:

Q. Did he give you heat treatments, the doctor? A. That's right.

MR. BAKER: Mark this.

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

(Document handed to Counsel for Respondent.)

BY MR. BAKER:

Q. Mr. Greer, you said that Mr. Byer said he hoped he had not interrupted your conversation. Now, were you in fact, talking with the welder at that time? A. The welder was telling me how to hold the piece, of panel, on the truck. I wasn't having anything to say.

Q. Did you know the welder's name, or do you know the welder's name? A. A new fellow. I don't know him.

Q. You say, a new fellow? A. He was a new fellow. I didn't know him.

Q. Do you recall how long he had been there prior to this incident? A. No, I don't because, I punched my card at various buildings, and you go up to the building to take orders to go out.

Q. Well, had you seen him before? A. A couple of weeks, maybe, I had seen him.

61 Q. Just — He had been there about two weeks? A. As long as I had seen him; he was around there.

Q. Had you been working with him prior to this date before? A. I had never worked with him before.

Q. This is the first day you ever worked with him? A. The first time I ever worked with him.

Q. Now, had you assisted in the union campaign of which there has been testimony here? A. Yes, sir.

Q. What sort of assistance did you give? A. I had some cards signed.

Q. You asked employees to sign some cards? A. That's right.

Q. Did you ask the welder to sign a card? A. Not that one.

Q. Had you asked another welder to sign a card? A. I did, and he signed it.

Q. He did? A. Yes.

Q. You hadn't asked this one? A. No.

Q. As a matter of fact, this was the first time you talked to him or

had been around him? A. I hadn't — I had been around him before, but I hadn't talked to him before about no union.

62 Q. Had you worked with him like this before? A. No, I hadn't.

Q. That would have been a good opportunity to have gotten the card signed, wouldn't it?

MR. KENNEDY, SR.: I object to the question.

MR. BAKER: I'll withdraw it.

MR. KENNEDY, SR.: And I ask that the answer be stricken.

MR. BAKER: I'll withdraw it.

TRIAL EXAMINER: The question is withdrawn. The answer is stricken.

BY MR. BAKER:

Q. Now, I show you what has been marked for identification Exhibit, General Counsel's Exhibit 6, and ask if you would explain or describe what that is.

(Document handed to witness.)

MR. KENNEDY, SR.: I think it speaks for itself, may it please the Trial Examiner.

TRIAL EXAMINER: He may answer. This is just for the purpose of identification.

THE WITNESS: This is a slip that I got from Dr. Jones when I went down and he examined my arm. He gave me this.

BY MR. BAKER:

Q. Now, was this — I notice this is dated the 19th. A. I went down there on the 19th.

Q. This was two days after you were discharged? A. The next day.

63 Q. The next day? A. Yes.

Q. You quit on the 18th? A. The 18th, and this was on the 19th.

Q. And, this is what he gave you? A. That's right.

Q. And, you had had no — any other injury or bruise on your arm for any other reason, other than what you testified here, during that one day that intervened?



MR. KENNEDY, SR.: We object to the form of the question.

THE WITNESS: No.

TRIAL EXAMINER: The objection is overruled; you may answer.

THE WITNESS: (Continued) No, sir.

MR. BAKER: I move that General Counsel's Exhibit 6 be received into evidence.

MR. KENNEDY, SR.: We object.

TRIAL EXAMINER: It will be received over objection.

(Whereupon, the document heretofore marked General Counsel's Exhibit No. 6 for identification, was received in evidence.)

BY MR. BAKER:

Q. Do you recall, Mr. Greer, when you first heard of the union campaign? A. That was around the latter part of March, I'd say around the 20th, 28th, 29th, something -- of March.

64

Q. Did you sign a card for the union? A. Yes, sir.

MR. BAKER: Would you mark this?

(Whereupon, the document above referred to was marked General Counsel's Exhibit No. 7, for identification.)

(Document handed to Counsel for Respondent.)

BY MR. BAKER:

Q. Now, I show you what has been marked for identification as General Counsel's Exhibit 7, and ask you if you can identify this card.

(Document handed to witness.)

A. That's the one I signed.

BY MR. BAKER:

Q. Is that your signature on there? A. Yes, it is.

Q. Did you sign it on or about March 29th, 1963? A. I did.

Q. Where did you get the card; do you recall? A. Jim Felder.

MR. BAKER: May we have just a moment?

TRIAL EXAMINER: Right. Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

65

(Whereupon, the documents above referred to were marked General Counsel's Exhibits Nos. 8 thru 24, for identification.)

BY MR. BAKER:

Q. Now, I show you what has been identified as General Counsel's Exhibit 8.

(Document handed to Counsel for Respondent.)

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

BY MR. BAKER:

Q. Now, you stated, Mr. Greer, that you secured some authorization membership cards from employees, is that correct? A. Yes, sir.

Q. Now, I show you what has been marked for identification as General Counsel's Exhibit 8 and ask if you recall this card.

(Document handed to witness.)

A. Yes, that's Isadore Glover.

BY MR. BAKER:

Q. Do you recall when you got this signed? A. Yes.

Q. This is on March -

MR. KENNEDY, SR.: Mr. Baker, would you do Counsel a favor and not stand in front of the witness, please. Thank you.

TRIAL EXAMINER: Just a minute. Off the record.

(Discussion off the record.)

66

TRIAL EXAMINER: On the record.

BY MR. BAKER:

Q. Mr. Greer, I hand you what has been marked for identification as General Counsel's Exhibits 8 through 24 and ask if you'll go through these cards and state which ones were signed in your presence.

(Documents handed to witness.)

A. That's right.

BY MR. BAKER:

Q. All of these were signed in your presence? A. All of them.

Q. Were there any cards there that you gave a man - A. I didn't see Joe's card in there. I gave one fellow a card and it - he taken it home and signed it.

Q. Who is that? A. Joe -

MR. KENNEDY, SR.: Joe who, please?

THE WITNESS: Yes, it's here. That's right.

MR. BAKER: Joe Griffin.

TRIAL EXAMINER: Let me see if I understand you, Mr. Greer. You have pulled out Exhibit 22, the card of Joe Griffin, and you say you gave Griffin this card and he gave it back to you, but he didn't sign it in your presence.

THE WITNESS: In my presence.

67 TRIAL EXAMINER: All the other cards were signed in your presence?

THE WITNESS: That's right.

TRIAL EXAMINER: On or about the date that is indicated on them?

THE WITNESS: That's right, sir.

TRIAL EXAMINER: All right.

BY MR. BAKER:

Q. Now, about Mr. Griffin - Joe Griffin's card, when did you give it to him? I mean, this is dated on April 16th. Do you recall? You say you gave it to him and he brought it back sometime later. A. I gave it to him one night; he asked me to give it to him. He taken it home with him. He brought it back the next morning on his way to work, and he gave it back to me.

Q. Do you recall what he said to you at the time you gave it to him?

A. He told me he was going to take it home and sign it and bring it back.

Q. Did he tell you when he would bring it back? Do you recall?

A. The next morning.

Q. Did he indicate if you were to meet him some place or something like that? A. See, he told me he has to come by me every morning,



68 going to his job. I was at one office and he was at the other. Before he started to work, he stopped down and gave me the card.

Q. And, he handed it to you? A. That's right.

Q. Do you recall what he said? A. He said, "I signed the card. Here it is."

MR. BAKER: At this time, I'll offer General Counsel's Exhibits 8 through 24 into evidence.

MR. KENNEDY, SR.: No objection.

TRIAL EXAMINER: They will be received.

(Whereupon, the documents heretofore marked General Counsel's Exhibits Nos. 8 thru 24 for identification, were received in evidence.)

TRIAL EXAMINER: 7, also, Mr. Baker?

MR. BAKER: Have I not offered 7? Yes, 7 through 24.

TRIAL EXAMINER: 7 will also be received.

(Whereupon, the document heretofore marked General Counsel's Exhibit No. 7 for identification, was received in evidence.)

BY MR. BAKER:

Q. Mr. Greer, would you state whether or not you've ever had any conversation with a supervisor or an official of American Compressed Steel regarding the union? A. Yes.

Q. Have you had more than one such conversation? A. Yes.

69 Q. Would you state with which supervisor or supervisors the conversation was involved? A. Herb Byer and Larry.

Q. Did you have more than one conversation with Larry Byer?  
A. Just one.

Q. Just one? A. Yes.

Q. Do you recall when you had the conversation with Mr. Larry Byer? A. Well, it was the latter part of June or the first of July.

Q. 1963? A. 1963.

MR. KENNEDY, SR.: Excuse me, Mr. Baker.

Mr. Trial Examiner, would you ask the witness please to keep his voice up?

TRIAL EXAMINER: Yes, Mr. Greer, can you keep your voice up?

BY MR. BAKER:

Q. Where did this conversation take place, Mr. Greer? A. In Herb's car.

Q. We're talking about Larry now. A. That was in the street in front of the office.

70 Q. In front of — A. In front of Larry's office. Front and Butler.

Q. Was anyone else around besides you and Mr. Greer — Mr. Byer? A. No.

Q. What did Mr. Larry Byer say to you about the union, and what, if anything did you say in reply? A. He said he heard we was trying —

Q. Now just talk slowly here. This is important. A. He said he heard we was trying to get a union in. He said it wouldn't do us any good, because we would be off early. He'd have to knock us off early — as we come in from driving the trucks. He said he wouldn't be able to let us drive the lift trucks around to the yard, as we had been doing.

And, I asked him — He said he heard it. I said, "Who told you?" He said, "I've heard it."

In other words, "I know it because my brother and I heard it about the same time."

Q. Heard what? A. Heard I was head of the union.

MR. KENNEDY, SR.: I move that answer be stricken because there's no foundation, there wasn't any question raised as to who was the head of the Union.

TRIAL EXAMINER: I believe that is correct, Mr. Baker. You can ask him to recount the conversation in a little more detail than he's done.

71 BY MR. BAKER:

Q. Now, would you just start — As I understand it, you are out in the street. A. That's right.

Q. Is that right? A. That's right.

Q. What, if anything, was Mr. Byer doing out in the street at that time, if you know? A. He came from up at 900 East Front on his motorbike. I was coming from up the street, walking from 900 East Front down to 800 East Front, I guess.

Q. All right. And then? A. He stopped his motorbike.

Q. He stopped his bike? A. He stopped his bike in the middle of the street and started talking to me about the union.

Q. All right. Now, what did he say first to you about the union?

A. He said he heard we fellows were trying to get the union in down there.

Q. All right. And what did you say to him? A. I told him I didn't know anything about it.

Q. And, then what did he say? A. He said he — everybody knowed it, because he and his brother heard about it at the same time. His brother, Herb. So —

72 Q. Heard that you were trying to get a union? A. I was trying to get a union.

Q. That you were trying to get a union in? A. We.

TRIAL EXAMINER: Just a minute, Mr. Greer. Did Mr. Byer say that you were trying to get a union in, did you understand him to refer to you personally, or the employees? Was it clear from this conversation what he was talking about?

THE WITNESS: He said "we" at first, was trying to get the union in.

TRIAL EXAMINER: Now, just a minute. He said "we", meaning himself?

THE WITNESS: You fellows. I'm saying we.

TRIAL EXAMINER: I see. He said "you fellows".

THE WITNESS: That's right. Are trying to get the union in.

TRIAL EXAMINER: All right. That's what we wanted, you see, Mr. Greer. What he said.

THE WITNESS: That's right.

TRIAL EXAMINER: Don't put it in your words. The best you can, put it in his words — as best you can.

THE WITNESS: All right.

TRIAL EXAMINER: Go ahead.

BY MR. BAKER:

73 Q. Now, would you do that? A. Yes. So he said — I told him I had no knowledge of it — the union. He said he and his brother both heard it about the same time, and it must be true. Then, I was the head of the fellows trying to get the union in.

MR. KENNEDY, SR.: What was that, please? What was that answer?

TRIAL EXAMINER: Do you want to read it, Mr. Tanner?

(The answer was read.)

BY MR. BAKER:

Q. Was that all that you recall of that conversation? A. No. He told me it wouldn't do us any good, because we would only get two or three cents on the hour, and that would be union dues.

Q. Now you, — I know this conversation has been sort of confused here now. You did say something about a lift truck in your earlier —  
A. That's right.

Q. Was there anything said about a lift truck? A. Yeah. He said we wouldn't be able to drive the lift truck in the afternoon, after we come in from driving at the other yard, around the yard like we had been doing. He couldn't afford to pay us if the union got in.

Q. Did you drive the lift truck? A. After I left from up at the other yard, if there was nothing to do, I would drive a lift truck for Larry  
74 down there where I punch my card at. In fact, I was working for Larry.

Q. Well, after this conversation with Larry, did you, in fact, stop driving a lift truck? A. Well, for a couple of weeks, he sent me home from 2:30 until 3:00 o'clock, something like that and then after Jenkins got fired, I started working after 5:00 o'clock.

Q. On the Tyler truck? A. On the Tyler truck and around the yard after I finished with the Tyler truck in the afternoon.

Q. How many hours did you — had you been working per week, prior to this conversation with Mr. Larry Byer? A. 42-1/2.

Q. And, what did you get after — that week or two in there you talked about? A. 36 to 38 hours with no lunch.

Q. Now you stated, I believe that you had a conversation with Mr. — Oh.

MR. BAKER: Let me strike that.

BY MR. BAKER:

Q. Was that the only conversation you had with Mr. Larry Byer regarding the union? A. Yes, sir.

Q. Now, you stated that you had conversations with Mr. Herbert Byer. A. Yes.

75 Q. Did you have more than one conversation with Mr. Herbert Byer? A. Yes.

Q. Now, I direct your attention to the first time you ever had a conversation with Mr. Herbert Byer regarding the union. Would you tell us when that conversation took place? A. It took place, Monday, April 22, 1963 in Herb Byer's car.

Q. In his car? A. That's right.

Q. Was anyone else present beside Herb Byer and you? A. No, he told me to come go with him. He took me in the car down to the tin can yard.

Q. You mean he asked you to get in the car and drove you — he drove then down to the tin can yard? A. That's right.

Q. Is that right? A. That's right.

Q. Now, would you tell the Trial Examiner what Mr. Herb Byer said about the union while you were in the car there, and what, if anything you said in reply? And, would you tell him in the words that Mr. Byer used, if you recall, or the best you recall? A. He told me, he said every two minutes — every minute he spent with me he was losing

76 \$10.00, because we fellows were trying to get a union in on him, and there wouldn't be a union in there as long as he owned the place, and if we got the union in, he could close the place up. His father and his brother know where they could get their next meal from, but we didn't.



And, I said I didn't know anything about the union.

He shoved his finger in my face like that, and said, "Don't lie to me. You know about it."

MR. KENNEDY, SR.: "Don't like to me . . ." what please?

TRIAL EXAMINER: "You know about it."

THE WITNESS: (Continued) He said, "I know you know about it, because you're carrying the ball for someone else," and someone else was carrying the ball for him. He knows every man that signed a card. And, if I tell the fellows to vote for the Company instead of the Union, I'd have a job.

MR. KENNEDY, SR.: If you had what, please?

TRIAL EXAMINER: If he would tell the company -- the fellows to vote for the company, instead of the union, he, Greer, would have a job.

MR. KENNEDY, SR.: Thank you.

THE WITNESS: (Continued) He said, if I tell the fellows to vote for the union, he didn't know what would become of me since I would still be working for him.

BY MR. BAKER:

77 Q. Did he say anything else? A. He said he wasn't going to fire me, but he was going to make it so damn hard for me until I quit.

Q. Did he say anything -- A. Yes, he said -- before he said that, he said, "I can get rid of everyone of you just like that and hire new fellows, but I'm not going to fire you, but I'm going to make it so damn hard for you until you quit."

Q. When is the next time you had a conversation with Mr. Herbert Byer? A. That was on Thursday, June the 13th, 1963. I was going down to Cincinnati Shaper to pick up a load of turnings. On the way back the differential went out on the truck.

I called for help. He sent Byron, and Lewis, down, and he came down later on. I don't know whether Byron called him or what. He came down later on and told me, "Every time I send you out something happens here lately."

Q. What did you say to him? A. I told him they didn't have no oil in the differential. It wasn't my fault. It was the mechanic's fault.

Q. Did it have oil in the differential? A. Byron checked it and there was no oil. He went out and bought a five-gallon can of oil.

Q. Did he mention the union at all; did he use the word "union" at that time? A. Not at that time, he didn't mention a union.

78 Q. He just said everytime you went out you had trouble. A. I had trouble.

Q. Lately. A. Lately. That's right.

Q. Now, did you have another conversation with him after that?

A. Yes, I did.

Q. And, when was that? A. When I took my truck down to Cynthia, Ohio. That was -

Q. Cynthia, Kentucky? A. Cynthia, Kentucky.

Q. Do you remember when that was? About what date? A. About the middle of July. I don't remember the date.

Q. That was this year, though? A. That's 1963.

Q. What happened then, if anything? A. I had three blowouts. In other words, flat tires. They blowed out. And then Byron brought me some tires. We fixed them. I got in about 8:00 o'clock.

First thing he said to me after I pulled the truck in the garage, to get the union men to find me a damn job.

MR. KENNEDY, SR.: I did not understand that.

TRIAL EXAMINER: The first thing he said after he brought in - after Greer brought in the truck, was get the union men to get me a damn job.

79 BY MR. BAKER:

Q. Then what - was anything else said? A. Yes. He said, everytime you go out you have trouble. Everytime you go out you have trouble. I have been having trouble with you ever since you fellows started with that Union, and he shook his finger at me like that and said, "You're a big man, John, but it don't mean a damn thing to me."

Q. Did you talk to him anymore after that? A. Yes, I did — No, I didn't talk to him. He talked to me.

Q. All right. When did he talk to you next? A. Up in the garage, changing a tire. He walked —

Q. Do you remember when that was — about? A. Yeah, that was August the 20th — That was Friday, August 23rd, about 5:30. I can remember that good.

Q. All right. Who was there in the garage? A. Nobody but Herb.

Q. Did he come — A. Just the two of us.

Q. Did he come in after you started working on the tire? A. That's right.

Q. What did he say? A. He told me, "All your boys are leaving here, John; what you gonna do?"

80 I didn't say anything. I just turned around and walked off and started whistling.

MR. KENNEDY, SR.: Started whistling?

TRIAL EXAMINER: Yes, sir.

BY MR. BAKER:

Q. Now, then, did you state that it was after that that you started driving the — A. After Jenkins got laid off I started driving the Tyler truck.

TRIAL EXAMINER: When was that, Mr. Greer?

THE WITNESS: I don't remember whether it was the last of July or the first of August.

TRIAL EXAMINER: All right.

THE WITNESS: I don't remember.

MR. BAKER: Well we can —

TRIAL EXAMINER: All right.

MR. BAKER: — stipulate on the record on that date that Jenkins was either quit, laid off or left — on or about July 26, is that?

MR. KENNEDY, SR.: We'll check into that. If that's true, we'll stipulate to it. I don't know if it is or not.



BY MR. BAKER:

Q. Jenkins had been driving the Tyler truck. Is that right?

A. For the last couple of weeks, he put Jenkins on the Tyler truck.

81      That's right.

Q. Now, do you know, after Jenkins was laid off, or fired, or whatever happened to him, you were put on the Tyler truck — is that right?

A. That's right.

Q. And taken off driving these long runs on the semi.      A. That's right.

Q. Now, how long had you been driving that semi until you were taken off?      A. From — I started driving in 1952, that semi.

Q. It was new in '51, and you started in '52?      A. 1952.

Q. Now, after you went onto the job that Jenkins had, do you know of your own knowledge, who drove the semi?      A. He hired some new fellow and put on that. I don't know him. I don't know his name. Some white fellow he hired and put on that. Stayed on there a couple days.

Q. A couple days?      A. I imagine a couple — maybe a week. I don't know.

Q. And, then he left?      A. Then he left. He left before I did.

Q. And, then do you know whether anyone else was put to driving that truck then, the semi — after this white man left that you didn't know?

A. He got the fellow from the tin can yard. George Dawkins.

82      Q. To drive the truck?      A. Yeah.

Q. Do you know if he had ever driven a semi before, to your knowledge?      A. I never seen him on one before.

Q. Now, during the 10 or 11 years that you drove the truck, was there ever any complaints about your work, or your ability to drive the truck?      A. Never was.

Q. State whether or not there was any reason given to you —

MR. BAKER: Oh, strike that.

BY MR. BAKER:

Q. Who transferred you from the semi to driving the Tyler truck?

A. Well, Tom is the one that told me. I don't know who give him instructions. Tom — the dispatcher.

Q. Do you know what his last name is? A. Olin.

Q. Tom Olin? A. I guess that's his last name.

Q. And, what did Tom tell you? A. Every morning when I'd come up, he'd say get the Tyler truck and go to various stops, like Red Bank Road, Este Avenue, places like that.

83 Q. Were you ever given a reason for why you were being transferred? A. No. They didn't talk to me after that.

Q. Mr. Byer didn't?

TRIAL EXAMINER: After what?

THE WITNESS: Didn't talk to me after I started driving the Tyler truck, only to tell me where to go.

BY MR. BAKER:

Q. To tell you where to go? A. That's all.

Q. All right.

MR. BAKER: You may inquire.

TRIAL EXAMINER: Off the record a minute.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. KENNEDY, SR.: Mr. Hearing Officer, the Respondent now moves the Hearing Officer to require of General Counsel to submit for examination and use by the Respondent any statements given by the witness to General Counsel or the Board.

MR. BAKER: Let the record show that General Counsel, pursuant to Counsel for Respondent's request, is being given a copy of two statements.

MR. KENNEDY, SR.: Counsel for the Respondent has the documents, which —

84 TRIAL EXAMINER: Very well. We will now adjourn until 1:30.

(Whereupon, at 12:20 o'clock p.m., the hearing was recessed until 1:45 o'clock of the same day.)

85

AFTER RECESS

(Whereupon, the hearing was resumed, pursuant to taking the recess, at 1:45 o'clock p.m.)

TRIAL EXAMINER FREDERICK U. REEL: On the record.

All right, Mr. Kennedy.

MR. KENNEDY, SR.: Thank you, Mr. Trial Examiner.

TRIAL EXAMINER: All right, go ahead.

CROSS-EXAMINATION

BY MR. KENNEDY, SR.:

\* \* \* \* \*

91 Q. Now, what part of the truck was this welding to be done?

A. On the front of the box.

Q. That's the part next to the driver's cab? A. Right.

Q. What did Herb say to you on the day he told you to go down and get it? A. He just told me to go down and pick the box up and bring it down to the welder.

92 Q. Where did you finally bring the truck with the box on it?

A. To the welder.

Q. Where was the welder? A. In front of the shed out there. The garage, out in the street, where they weld at.

\* \* \* \* \*

102 Q. Did he say -- how did your conversation -- what was the last thing he said to you? A. The welder?

Q. Yes. A. After Herb hit me he said, "I wouldn't take that".

\* \* \* \* \*

107 Q. You were hired, you say, in 1949, I think. Is that right?

A. Yes, sir.

Q. You were hired as a laborer? A. That's right.

Q. And, then sometime after that you began driving a truck?

A. That's right.

Q. For whom did you work when you were first hired? A. Sam Byer.

108 Q. And, how long was Sam Byer your boss? A. That, I don't know. I can't tell you exactly the date.

Q. What other bosses have you had besides Sam Byer? A. Larry Byer, Harold Byer and also Sam Cohen. I don't know whether he was boss or not, but he was out there.

Q. Who took you off the laboring job and gave you another job, sometime after you were hired? A. Sam Byer.

Q. What job did he give you? A. Driving a truck.

Q. He put you on what you call a semi. Is that right? A. That's right.

Q. What is a semi? A. Tractor-trailer.

Q. A trailer which can be pulled by a tractor and then dropped off from the tractor. Is that right? A. That's right.

Q. When did you begin driving the semi? A. The latter of '51. It was the latter part of '51, the first of '52.

Q. And you drove — You said you drove short jobs and long jobs. Did you? A. Yeah.

109 Q. When did you begin driving the long jobs? A. The latter part of '51 and '52.

Q. You began driving right away. Is that it? A. All of them.

Q. And where did you go on the long jobs? In '51 or '52. A. G.E. for one.

Q. General Electric in Evendale, in Cincinnati? A. That's right.

Q. What would be the nature of that haul? What did you haul?  
A. Miscellaneous scrap.

Q. Go out empty and come back loaded? A. That's right.

Q. Where else did you drive on the long jobs? A. I don't recall any, the first of '51.

Q. No, after '51, when you began — when you first got the job, when you first got the job of driving the semi, where did you drive besides to Evendale in Cincinnati? A. Oh, I drove various places. I can't recall all the places that I went.

Q. Can you recall any? A. Not in '51.

Q. Well, in '52. A. I can't recall any, where I was going in '52.

110 Q. '53? A. I still can't recall any.

Q. Any year up to 1957, '58? A. I still don't remember anyplace but G.E.

Q. No place – you never went anyplace but G.E. But you surely did go other places, didn't you? A. Perhaps I did.

Q. Don't you know? A. I don't remember.

Q. You don't remember? A. No.

Q. You never drove anything but the semi until 1963. Is that right?  
A. I drove both.

Q. You drove what? Both? What do you mean both? A. Semi and straight jobs.

Q. What's a straight job? A. A two-ton truck. Just a straight ordinary truck.

Q. What kind of trucks do they – since your time at American Compressed Steel, since your time at American Compressed Steel, what kind of trucks have you driven? Semi and then what else? A. Straight jobs. Practically everything they had down – dumpsters.

Q. Dumpsters? What else? A. That's all they had, and the Tyler truck.

111 Q. And the Tyler truck? A. That's right.

Q. Did you drive a dumpster between 1951 and 1963? A. Yes, I did.

Q. But you never drove a truck – Tyler, between 1951 and 1963, did you? A. Yes, I did.

Q. Oh, you have? A. Yes.

Q. Well, then, the day you went on the Tyler truck, July 22nd, 1963, wasn't – that wasn't the first time you ever drove a Tyler was it? A. Not the first time I ever drove a Tyler. It was the first time I picked up tin cans.

Q. The first time you picked up cans? A. At the dump.



Q. You never picked up cans at the dump before July 22nd , 1963 ?

A. Never have.

Q. You're sure of that? A. I'm positive.

Q. You're positive? A. That's right.

MR. BAKER: I think the record should show -- I don't believe that the date of July 22nd is the date that he's testified to.

112 MR. KENNEDY, SR.: All right. Let's get that.

MR. BAKER: If you check -- Jenkins was discharged on July 26, I believe. Didn't you check that?

BY MR. KENNEDY, SR.:

Q. Prior to the day that Jenkins quit and you've identified that as the time you first were given a job picking up cans, with the Tyler truck, didn't you? A. No other job but that.

Q. Please? A. No other job but that.

Q. I say that's the time you started at that? A. That's right.

Q. Now, before the day Jenkins quit, did you ever pick up cans in a Tyler truck? A. No.

Q. No. A. Not regular, no.

Q. Please? A. No.

TRIAL EXAMINER: Just a minute, Mr. Greer. You mean never or not regularly? Which?

MR. KENNEDY, SR.: Wait a minute. Just a minute, Mr. Trial Examiner. I object to the Trial Examiner's intrusion here.

TRIAL EXAMINER: All right.

113 MR. KENNEDY, SR.: I asked the witness a question and I ask that the question please be re-read.

TRIAL EXAMINER: Mr. Kennedy, to keep the record straight, the witness answered with two inconsistent words, almost simultaneously, and I want the record to be clear.

You may continue with cross-examination, but I think the record will show that the witness answered somewhat inconsistently, and for your sake as well as all the rest of us, I think we should have a clear record.

Go ahead.

MR. KENNEDY, SR.: May I have that question re-read?

TRIAL EXAMINER: And the answer?

MR. KENNEDY, SR.: Yes, yes, yes.

(Question and answer were read.)

MR. BAKER: I'm not clear as to the witness' answer. I'd like to know whether he answered no, or whether he answered not regularly.

TRIAL EXAMINER: Mr. Kennedy can bring it out, or if not, you can bring it out on redirect.

Go ahead, Mr. Kennedy.

BY MR. KENNEDY, SR.:

Q. I asked you, Mr. Greer, whether the time you took out the Tyler truck to get cans, the day or the day after Jenkins quit. You recall that, don't you? The day you went out, that Herb sent you out to get cans. Either the day Jenkins quit or the day after he quit. You recall that? You testified to that. You recall that, don't you, sir? A. Yes.

Q. Now, my question, Mr. Greer, is this. Is that the first time that you ever hauled cans in a Tyler truck? A. Not regular.

Q. You did haul them before? A. I have, but just once in a while before Jenkins left.

Q. Well, now, once in a while is not too definite, Mr. Greer. Will you tell us what you mean by, now once in a while? What do you mean by that? How often? A. That's when he didn't have anything else for me to do except send me on the dump.

Q. How often would that happen? A. That, I didn't notice.

Q. Well, it wasn't very often, was it? It was only when you ran out of work, wasn't it? A. That's right.

Q. Was that once a day? A. No.

Q. Once a week? A. No.

Q. Once a month? A. Maybe once.

Q. Not more than that?

115 MR. KENNEDY, SR.: Has the witness answered that?



TRIAL EXAMINER: Have you answered that, Mr. Greer? Not more than once a month?

THE WITNESS: Not more than once a month, no.

BY MR. KENNEDY, SR.:

Q. Did anybody else drive a Tyler truck at the time Jenkins was with the Company besides Jenkins? A. Yes.

Q. Who was that? A. Sylvester Vaughn, Nathan Williams, Robert Lewis.

Q. Now, Lewis was a yardman, wasn't he? A. I don't know what Lewis was. I knew what he was doing.

Q. Please? A. I don't know what Lewis was. I knew what he was doing.

Q. Well, he was driving a truck around the yard, wasn't he?  
A. He was driving out, too.

Q. Driving out regularly?

MR. BAKER: I think I'm going to object to this.

MR. KENNEDY, SR.: This is important; this is important.

MR. BAKER: I think there is no foundation here for asking this witness to testify as to what another employee — how another employee  
116 was classified, or what he did, or anything else.

TRIAL EXAMINER: Overruled.

You may go ahead, Mr. Kennedy.

MR. BAKER: If it please the Trial Examiner, I think he should ask him if he knows.

TRIAL EXAMINER: Well, it's understood, Mr. Greer, if you don't know what Lewis was doing, you say so.

All right, Mr. Kennedy.

THE WITNESS: I understand.

TRIAL EXAMINER: All right, Mr. Kennedy.

MR. KENNEDY, SR.: What was the witness' —

TRIAL EXAMINER: He understands. If he didn't know what Lewis was doing, he will say so.

BY MR. KENNEDY, SR.:

Q. You don't know how much time Lewis spent in the yard, and how much time he spent out of the yard? A. I don't know.

Q. What did Nate Williams do besides drive a Tyler truck, do you know? A. I don't know that either.

Q. Was he a truck driver? A. I know he drove trucks.

Q. Do you know how much time he spent driving trucks and how much time he spent in the yard? A. I don't know.

117 Q. When did Sylvester Vaughn leave the employment of the Company? A. I don't know that either.

Q. It was about the time that Jenkins quit, wasn't it?

MR. BAKER: I'm going to object to that. The witness said he didn't know. I don't see where it's material in any event, Mr. Examiner.

TRIAL EXAMINER: I don't know what it's materiality is, Mr. Baker, but I'll give Counsel some leeway on cross-examination, and this last question is trying to link up the time in an admissible way by refreshing his recollection, if it will help.

Go ahead, Mr. Kennedy.

BY MR. KENNEDY, SR.:

Q. I asked, Mr. Greer, if it wasn't about the time that Jenkins quit. They quit about the same time, didn't they? A. I don't know.

Q. You do know that Vaughn quit. A. I know after he quit; I wasn't there when he quit.

Q. You were not there when Vaughn quit? A. We have two offices.

Q. Well, you were in the employment of the Company, weren't you?  
A. I was employed by the Company, but I still didn't know when he quit.

118 Q. The next day, though, you saw that Vaughn wasn't there? A. I didn't look for him.

Q. You didn't look for him. A. No, sir.

Q. Suddenly one day it became apparent to you that Vaughn was gone, though, didn't it? A. After I seen him out on the street.

Q. Yeah. A. Yes.

Q. And that's about the time that Jenkins quit, wasn't it? A. I don't know.

Q. I see. But after Jenkins quit your job on the Tyler truck stepped up, did it, the times you were given a job on the Tyler truck. Is that right? A. Practically everyday; everyday.

Q. Please? A. Everyday.

Q. Everyday. A. That's right.

Q. So between once a month you got it at least everyday, is that it, and sometimes more than once a day, didn't you, Mr. Greer? A. I didn't  
119 understand you.

Q. I say sometimes you got — you were assigned to a job on the Tyler truck picking up cans more than once a day, weren't you? A. After Jenkins left?

Q. Yeah. A. Yes.

Q. Before Jenkins left, only once a month. A. That's right.

Q. After Jenkins left, at least once a day. A. All day.

Q. All day. A. Not once a day.

Q. Please? A. That was my job, hauling tin cans.

Q. You hauled nothing but tin cans. A. Practically nothing but cans.

Q. Now, what do you mean by practically? Will you qualify practically? How much time did you spend on cans, and how much time did you spend on other materials? A. I don't know how much time it were, sir.

Q. Well, how much time would you spend — what percentage of your time? A. On tin cans.

120 Q. All of it? A. The percentage of it. I'd say 90% on tin cans.

Q. 90%. A. Hauling tin cans.

Q. And the rest of it hauling other material. A. That is right.

\* \* \* \* \*

133 Q. Did you do any work in your time as an employee with the com-  
134 pany other than a laborer and a truck driver? A. Crane operator.

Q. What else? A. Oh various — a bricker — running a briquette machine; drove a lift truck.

Q. Down there you do about what has to be done when it comes up; everybody does a little bit of everything. Isn't that right, Mr. Greer?

A. That's right. I drove a truck mostly.

Q. The day that Tom Olin told you to take the Tyler truck out was the first time that -- I mean the time he told you just after Jenkins had quit --

It was Olin who told you to take the truck out, wasn't it? A. Yes, it was.

Q. Is that the first time Olin ever told you to take the truck out?

A. No, it isn't.

Q. Is it the first time he had ever told you to take a Tyler truck out? A. No, it isn't.

Q. So there wasn't anything unusual about Olin telling you to take the Tyler truck out, was there? A. He goes by Herb's orders. He'd tell us to go out in the yard and ask Herb what he wants us to do.

135 Q. He'd tell you what Herb has told him to do, such as, "Go out and ask Herb what he wants you to do". Isn't that right? A. That's right.

\* \* \* \* \*

141 Q. Well, did you haul any cans on -- anything but cans on the Tyler?

A. Yes; I hauled something besides cans on the Tyler.

Q. What? A. Turnings.

Q. Now, what are turnings? A. They're turnings off of lathes.

Q. They're small pieces of metal which are thrown off of a lathe as they are taken off a piece of metal, are they not? A. I guess that's what you'd call it. All I know is turnings.

142 Q. They're small pieces of metals, aren't they? A. Yeah; little things you hang up together.

Q. Little round things you hang up together. A. That's right.

Q. They're generally oil soaked when you get them, aren't they?

A. Some places.

Q. Some places? A. Yeah.

Q. Do you have to rake them out? A. No.

Q. You never have to rake them out? A. No.

Q. What other materials do you haul besides cans and turnings in a Tyler truck? A. That's the only thing I hauled.

Q. Is there anything else that anybody else hauls in a Tyler truck?  
A. I don't know.

Q. Do you ever go to Fisher Body in Hamilton? A. That's right.

Q. You do go there with a Tyler truck? A. To pick up a box, yes.

143 Q. What's in the box? A. It's galvanized stuff, tangled all up; just like turnings.

Q. Galvanized metal tangled up like turnings? A. I guess so; I guess you'd call it metal.

Q. Do you bring that back to the yard? A. That's right.

Q. Do you dump that? A. No; we take it off with a crane.

Q. You take it off with a crane. A. That's right.

Q. Do you dump every box that comes into the yard, Mr. Greer?  
A. Every box of what?

Q. Every box of waste material you bring into the yard, or scrap material; do you dump every one of them? A. No, sir.

\* \* \* \* \*

145 Q. What percentage of your loads are unloaded by crane, and what percentage of your loads were unloaded by hand? A. Percentages, I don't know.

Q. Was it about half and half? A. I don't know that.

Q. How long had you been driving these trucks which were unloaded partially by hand and partially by crane? A. Since I've been with the Company.

Q. And you aren't able to estimate what percentage, or how many out of — how many trucks out [of] a hundred would be unloaded by hand and how many trucks out of a hundred would be unloaded by crane? You can't tell us that? A. No.

\* \* \* \* \*



174

## REDIRECT EXAMINATION

BY MR. BAKER:

Q. You testified, Mr. Greer, that you had driven the Tyler truck before you put on it full time hauling cans. Had you driven it for purposes other than hauling cans? A. Yes.

Q. What other purposes did you use it for? A. I used it for hauling turnings, and that galvanized scrap.

Q. Now, after —

MR. KENNEDY, SR.: Mr. Baker, excuse me. Did you set the time, when you're asking about this operation — this last question?

175 MR. BAKER: I'm asking prior to the time he was put on it for hauling cans.

MR. KENNEDY, SR.: Prior to. Thank you.

BY MR. BAKER:

Q. Now, after you were put on this truck full-time hauling cans did you use the Tyler truck then to haul anything else? A. (No response).

Q. From this time, July 26th, up until the time you quit, you drove the Tyler truck exclusively. Is that correct, Mr. Greer? A. Practically everyday.

Q. Practically everyday. A. Yes; practically everyday.

Q. All right. Now, on the days you didn't drive it, what were you driving? A. A tractor-trailer.

Q. Did you go back to the tractor-trailer? A. Tractor-trailer. If I didn't go to one dump, then I'd go to another, and then I'd go back and get the other job, whichever he wanted.

Q. With the tractor-trailer. A. With the dump, or Dempster, anything he put me on.

176 Q. Did you make any — From the time, say July 26th up until the time you quit, did you ever make any out-of-town runs any more with the tractor-trailer as you had been doing prior to that time? A. I don't remember; if it was, it was so few.

Q. Sir? A. I say I don't remember; if it was, it was so few.



Q. I believe you testified that your main job was hauling cans with the Tyler truck. A. Cans, yes.

\* \* \* \* \*

179

## RECROSS-EXAMINATION

BY MR. KENNEDY, SR.:

Q. In answer to Mr. Baker's question as to what you did prior to the time that Jenkins quit, did you testify that you -- you made some testimony about hauling turnings. Is that true, Mr. Greer? A. Prior to the time that Jenkins quit?

Q. Yeah. A. I don't remember whether it was before or after, but I did haul turnings from Cynthiana, Kentucky with a Tyler truck. I  
180 don't know whether it was after Jenkins quit or before he quit. But I did go to Cynthiana.

Q. You hauled turnings just once, and that was from Cynthiana, huh? A. No, I hauled turnings more than once. I say I don't remember whether that was before he quit, or after, when I went to Cynthiana. I've hauled turnings more than once.

Q. You testified when I asked you before, as I recollect, that you only drove a Tyler truck about once a month before Jenkins left. You testified to that, didn't you? A. I did, yes.

MR. BAKER: I don't believe that was the witness' testimony.

TRIAL EXAMINER: The record will speak for itself.

Go ahead with the question, Mr. Kennedy.

BY MR. KENNEDY, SR.:

Q. Now, then, did you haul turnings before Jenkins left? A. Yes, I hauled turnings before he left.

Q. So the times you used the Tyler truck once a month, some was in turnings and some was in cans. Is that right? A. Something like that. I don't remember now whether it was once a month when I was picking up --

Q. Please? A. I don't remember which one I was picking up, turnings or cans.

181 Q. But it was on the average of once a month in the Tyler truck.

A. Something like that.

Q. Before Jenkins quit. A. Yes, sir.

Q. Now, afterwards you said that you drove practically everyday. Practically everyday you drove all day, you drove a Tyler truck. Is that right? A. Practically.

Q. So the only time you didn't drive a Tyler truck was at the end of the workday when there wasn't anything else to do. A. When he didn't have no loads for the Tyler truck on the dump. That's what I was saying.

Q. That didn't happen very often; that only happened 10% of the time, you told us before, didn't you? A. I said I was picking up tin cans 90%, I was on the dump.

Q. Please? A. I said I was working the dumps 90% of the time.

Q. Working the dumps 90% of the time. A. That's right.

Q. You didn't haul cans unless you were on the dumps, did you?  
A. That's the only place.

182 Q. So 90% of the times you were using a Tyler truck hauling cans from the dump – to and from the dump, and – from the dump to the yard, rather, and the other 10% of the time you did what they told you to do. Is that correct? A. (No response).

TRIAL EXAMINER: Is that right, Mr. Greer?

THE WITNESS: Other than – I don't remember whether I made a trip to Cynthiana when I had the tire blown out or not. I don't remember whether it was before or after. But all the others I remember.

BY MR. KENNEDY, SR.:

Q. Well, if that is important, then you're only talking about one trip, somewhere in the second half of July and the time you quit. That's all you're talking about there. Otherwise you spent 90% of your time on the dump. A. Yes, sir.

\* \* \* \* \*

184

## ROBERT BAKER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. BAKER:

Q. State your name and address, please, for the record. A. Robert Baker, 3547 Highland Avenue, Zone 29.

Q. Are you presently employed by American Compressed Steel?  
A. No.

Q. Were you ever employed by that company? A. Yes, sir.

Q. When was the first time you started to work for them, Mr. Baker? A. March the 6th in '63.

Q. Had you worked for them prior to that date? A. Before, yes.

Q. Yes. When was the first time? A. The first time I started working was, if my memory serves me right, I think I started in August, the 26th, 1945.

Q. Did you work -

MR. KENNEDY, SR.: What year, please?

TRIAL EXAMINER: '45.

MR. KENNEDY, SR.: '45. Thank you.

BY MR. BAKER:

185 Q. Did you work for them off and on during that period of time?

A. Off and on.

Q. More than one time before 1963, when you came back to work there? A. Once.

Q. Just once? A. That's right.

Q. Now, that -

TRIAL EXAMINER: You mean you were off once during that period?

THE WITNESS: Between -

TRIAL EXAMINER: Well, get it again, Mr. Baker. He started to work in August of '45.

And then you - Do you remember approximately how long you worked on that -

THE WITNESS: I worked from August the 26th in '45, if my memory serves me right, until September the 3rd in '52.

TRIAL EXAMINER: All right. And then what happened?

THE WITNESS: I worked at Cincinnati Milling Machine.

TRIAL EXAMINER: When did you go back to American Compressed?

THE WITNESS: I come back in February the 2nd in '54.

TRIAL EXAMINER: February, '54?

186 THE WITNESS: That's right.

TRIAL EXAMINER: And how long did you work then?

THE WITNESS: I worked then from the 2nd of February in '54 until the 3rd day of April in '56.

TRIAL EXAMINER: And then the next time you came was in '63?

THE WITNESS: '63.

TRIAL EXAMINER: All right. Go ahead.

BY MR. BAKER:

Q. What work did you do, Mr. Baker? A. I was a burner in Grade 9.

Q. Were you a burner out at Cincinnati Milling Machine? A. No, I was a hookman at Cincinnati Milling Machine.

Q. What? A. What you call a hookman. That's handling these big machinery, you know, hooking up, carrying them from different places and different - what they call these planers, big machines, run these roll castings.

Q. Shapers and planers. Well, now, how long have you operated torches for burning? How long have you been doing that? When is the first time? A. Well, I started, I think in February, when I started regular, in '47.

Q. Was that the first time you had used - A. '46.

187 Q. Was that the first time you had ever used a torch? A. That's the first time I've ever used a torch.

Q. And have you used a torch with the exception of the time you worked at Milling - Cincinnati Milling Machine? A. That's right.

Q. All your other jobs involved the torch? A. All my other jobs involved the torch.

Q. Now, how long did you work at American Compressed Steel the last time? A. From March the 6th through July 23rd.

Q. July the 23rd? A. That's right.

Q. Did you sign a union card? A. I did.

Q. Did you sign the card before or after you were discharged?

A. I signed it before I was discharged. I signed it July the 23rd, and I was fired July the 24th.

MR. KENNEDY, SR.: What was the answer, please?

TRIAL EXAMINER: He said he signed it July 23rd and was fired July 24th.

THE WITNESS: (Continued) July 23rd was the last day I worked.

BY MR. BAKER:

Q. Were you fired in the morning on the 24th? A. In the morning.

188 Q. You came in to work but didn't get started. Is that right?

A. That's right.

Q. You signed the card the next day - I mean the day before.

A. The day before.

Q. Do you remember what day of the week it was that you signed the card? A. July the 23rd.

Q. No; what day, not what date. A. It was on a Tuesday.

Q. Do you remember where you signed the card? A. Yes, I do.

Q. Where was it? A. It was out by I.B.C. Grill on Central Avenue.

Q. Now, do you recall at that meeting - Did you subsequently leave the I.B.C. Grill and go some place else? A. I went home.

Q. You left out there and went home. A. Yes.

Q. Well, did you date the card when you signed it? Did you put the date on it, do you remember? A. No, I didn't.

Q. You did not date it? A. No.

189 Q. Now, I show you a card -

MR. BAKER: Let me have it marked - well, no, I'm not going to mark it for identification.



BY MR. BAKER:

Q. Is this the card that you signed?

(Document handed to witness.)

A. Yes.

MR. KENNEDY: Now, to what is General Counsel referring, Mr. Hearing Officer?

MR. BAKER: I've got an Application for Membership in International -

MR. KENNEDY, SR.: Has it been identified yet?

MR. BAKER: It hasn't been identified.

BY MR. BAKER:

Q. I notice this card is dated July 25th. Now, you say you did not date the card? A. No, I did not date the card myself.

Q. Are you sure that you signed this card yourself on the 23rd?

A. I'm sure that I signed it on the 23rd.

Q. Night? Was it at night? A. On the afternoon, about 6:00 o'clock, I would say.

Q. And the next day you went to work, you were discharged. Is that right? A. That's right.

190 Q. Who discharged you? A. Herbert Byer.

Q. Herbert Byer? A. Yes.

Q. Did he give you any reason for discharging you? A. Yes, he did.

Q. What did he tell you? A. Well, he told me, he said he couldn't pay for the air and the gas, that I left the tanks open, I didn't shut them off and the gas was running out the tank.

Q. Did you leave the tanks open? A. No, I didn't.

Q. Did you ever leave the air pipes at any - the air valves open at any other time that you can recall since you've been operating cutting equipment? A. Once, about '47, I think it was, when I first started cutting. And the hose busted, and the foreman of the yard, Mack Beech, he told me, he said, "Whenever you leave them", he said, "Always cut them off. Your hose might bust, and the air will run out."



So from that day on, since I've been burning, I shut them things off, everyday at noon when I got to lunch, and every night. And also if I happen to leave and think I'll be gone, you know, twenty minutes, or a half hour, I'll shut them off. I never leave them on.

191 Q. Well, assuming that you would leave the valves on the tanks open, are there still valves on the end of the torch that would have to be open for the gas to escape? A. After you cut them off —

MR. KENNEDY, SR.: Mr. Baker, excuse me, I didn't hear your question.

MR. BAKER: Listen, and I'll start all over again.

BY MR. BAKER:

Q. Is there a valve at the top of the tank that you can turn on or off, as it comes out of the tank and before it starts into the hose? A. That's right.

Q. There's a valve there? A. That's right.

Q. You can turn that off? A. You can cut that off.

Q. Now, are there valves down near the torch? A. That you can turn them off.

Q. That you can turn off? A. You can turn them off and on, but the air won't be cut off from the tank; it will just be cut off from the torch.

Q. All right. Now, if you left the valve turned on at the tank, but had it turned off at the torch, is it a fact, then, that the only way the air could escape would be for the hose to burst? A. Bust. That's right.

192 Q. Well, now, do you know if the hose burst the day you were fired, or that night were you told that the hose burst? A. No, I wasn't.

Q. Now, if you left the valve on at the tank, and also the valve on at the torch, how would you get the flame out? A. How would I get the flame out?

Q. Yes. A. Well, I have to turn — light one first, light the gas first, and then turn the air on and the flame.

Q. But now you've got it lit. If you want to turn the flame off, how do you turn the flame off? A. Just screw them up.

Q. Close the valve, is that it? A. Close the valve on the torch.

Q. So if you hadn't closed the valve down on the torch when you left work, the flame would still be burning. Is that right? A. No, not necessarily.

Q. Could it have gone out by itself? A. No, it wouldn't have went out itself. Somebody would have put it out. But you could smell it. If I had left the gas on it would be seeping out and you could smell it all over the yard. It would be strong enough.

193 Q. Is it normal procedure in putting out the torch to turn off the gas down at the torch? A. The torch.

Q. And that puts the flame out. A. That's right.

Q. And then you go up and turn off the valve on the tank. A. On the tank.

Q. Is that correct? A. That's right.

Q. Now, if you had put the flame out by turning the torch off at the end, the only way the gas would have seeped out would have been for the hose to burst. A. That's right.

Q. Is that correct? A. That's right.

Q. And you remember distinctly turning off both sets of valves.  
A. Both sets.

Q. Did you tell Mr. Byer that? A. I did.

Q. What did you tell him? A. He said I left them on that night; I didn't cut them off that night. I told him I sure did. I told him about ten minutes to 5:00 I finished burning what I had to burn. I said the only thing,  
194 I had a little more grading to do, picking out different types of steel. I said I hung my hose up, cut the tanks off, screwed the gage out, the pressure on the gage, and shut both tanks off. I said I know I did that about ten minutes to 5:00.

And he said it wasn't cut off that morning. And so I said to him, I said, "Herb", I said, "I was cutting these things off when you were a little boy running around here in the yard with your father, coming in after school, or some Sunday coming down with your dad." I said, "I know I cut them off." I said, "The only way they could have got on is somebody to turn them on."

So he said, "They wasn't off last night." So that's all he said.

Q. Did he tell you, then, that you were fired? A. He didn't say I was fired. He told me to go down to the office and get my money, and I guess that means I was fired.

Q. You got the impression that that's what it was. A. That's right. I mean paying me off.

Q. Now, between the time that you came back to work and the time you were fired, did you have any conversation with any supervisors regarding the union? A. Nobody but Herbie, Herb Byer.

Q. You did have — Did you have more than one with Herbie?

195 A. I had two or three conversations with him.

Q. Now, I direct your attention to the first time that you had a conversation with Herbert Byer regarding the union. Will you tell us about when that conversation took place? A. As near as I could remember, about the 10th or 12th of April.

Q. Of this year? A. This year.

Q. Where did this conversation take place? A. It was there on the yard.

Q. In the yard? A. That's right.

Q. Was anyone else around? A. No.

Q. When you were talking with Mr. Byer? A. No, there wasn't.

Q. All right. What did he say to you about the union, and what, if anything, did you say in reply? A. Well, he asked me did I know anything about the union. I told him, no, I didn't, I didn't know anything in the world about it.

Q. Could you speak up a little bit, sir? A. He asked me did I know anything about the union. I told him, no, I didn't; I didn't know anything in the world about the union.

196 So he said, "I don't want a mistake." He said, "I'm not no fool." I do know something about it.

I said, "Well, I sure don't. I don't know anything in the world about it."

Q. Did he say anything else to you about it? A. Yes. He said —

Q. At this time, during this same conversation. A. This same conversation. He told me, he said he wasn't going to have no union in there; and if he'd get a union in there he'd fire everyone he thought was for the union.

I told him I didn't know a thing in the world about the union.

He turned around and walked on off.

Q. Well, did he indicate to you in any way why he thought you may know something about it? A. Well, he did tell me once - I was working out at Liberty Scrap at that time, in the year before, I was working out at Liberty before I came back to Compressed Steel Company, and they tried to get a union out there the year before, and so he told me, he said he thought I was the obligator of it, because we was trying to get a union in at Liberty.

I said I didn't have anything to do with it out at Liberty. I said, "I don't know a thing about this one here."

197 Q. But he told you since they tried to get one at Liberty, he thought you were the one trying to originate - A. Down there.

Q. Down there. A. That's right.

Q. Did you know anything about it at that time? A. I really didn't.

Q. Now, did you have another conversation with Mr. Byer?

A. That's right.

Q. When did this next conversation take place? A. That was about April the 22nd, somewhere along in there.

Q. Now -

MR. KENNEDY, SR.: April what, please?

MR. BAKER: 23rd or 22nd.

MR. KENNEDY, SR.: Thank you.

BY MR. BAKER:

Q. Do you recall where this conversation took place? A. Yes. It was on the yard.

Q. In the yard. A. That's right.

Q. Was anybody else around at that time? A. No, there wasn't.

Q. Now, what did Mr. Byer say to you at that time about the union?

A. Well, I don't think he mentioned the union at that time. I won't be for  
198 sure. I think that was the time I was talking with Jackson about an  
accident I had with my car. We was working along side by side. That  
was about 4:55 or 4:50, something like that.

So he come up to Jackson and told him to go clock out. So he walk-  
ed on away from me, and a minute or two later he come back to me, and  
so he asked me, he said, "You must not appreciate your job."

I said, "Why is that?"

He said, "I don't think you appreciate it."

I said, "Herbie, if I never appreciated it, I never would have took  
it. Why do you think I didn't appreciate it?"

He said, "Well, you're in bad company."

I said, "Well, I don't know about that. Why do you say that?"

He said, "Well, you know what I'm talking about."

I said, "Well, Herb, I don't have nothing to do with nobody but my  
own affairs."

He said, "That's the reason you should do; you keep it that way."

And he walked on off.

Q. Did you state whether or not you subsequently learned what he  
was talking about? A. Oh, I had an idea. I couldn't, you know, prove  
anything.

199 Q. Did Jackson say anything to you? A. Well, the next day I was  
working there. He and Jackson was over -

Q. Herbie and Jackson? A. That's right.

- over in the railroad tracks fixing up boxcars, or something be-  
side the dock. So after they came back - got through, Jackson come on  
back by me, and he said, "You know -

MR. KENNEDY, SR.: We'll object to any conversation between this  
witness and somebody else unless it's in the presence of a responsible  
member of the company.

TRIAL EXAMINER: Well, I'll let it in the record for what it's  
worth. But, Mr. Baker, you appreciate it's not going to be very probative.



Go ahead.

MR. BAKER: Yes, I realize that.

TRIAL EXAMINER: Go ahead, Mr. Baker.

THE WITNESS: (Continued) So Jackson told me, he said, "You know what Herbie got mad and made me punch out yesterday for?"

I told him, "No."

He said, "He said we was talking about the union."

I said, "Well, I don't know why he would say that. We hasn't even mentioned no union", which we hadn't said anything about no union. I was telling him about an accident I had with my car.

200 Q. (By Mr. Baker) Now, did you have any other conversation?

MR. KENNEDY, SR.: Just a minute, Mr. Baker.

MR. BAKER: Sir?

MR. KENNEDY, SR.: Just a minute.

I move the answer of the witness be stricken.

TRIAL EXAMINER: Do you want to be heard on that, Mr. Baker?

MR. BAKER: Yes; I want to know on what basis he moves it be stricken.

TRIAL EXAMINER: In effect he's asking me to reconsider my ruling, because it's pretty plain it's hearsay as far as the Company is concerned.

MR. BAKER: I don't think there's any question, it's hearsay, but not — we're not necessarily offering this evidence as —

I think a proper objection would be to the materiality of it. This witness can testify as to what someone said to him. I'm not offering it for the truth of the matter.

TRIAL EXAMINER: Yes. The matter will stand in the record, and we'll see later whether any findings are based on it.

Go ahead.

BY MR. BAKER:

Q. Now, did —

MR. KENNEDY, SR.: Thank you.



201

BY MR. BAKER:

Q. Did you have any other conversations with Mr. Byer, Herbert Byer, regarding the union, Mr. Baker? A. Yes. About August 27th or '8th - I mean April 27th or '8th, somewhere along in there, as near as I can remember.

Q. Where was this conversation? A. That was also in the yard.

MR. KENNEDY, SR.: I can't understand the witness.

MR. BAKER: He said it was also in the yard.

TRIAL EXAMINER: Keep your voice up, please.

BY MR. BAKER:

Q. Was there anyone else present during this conversation?

A. No, there wasn't.

Q. What did Mr. Byer say to you this time? A. He asked me has I heard any more - has I learned any more about the union. I told him, "No, I haven't."

So he said, "Yes, you know". He wasn't no fool. I heard something about it. And so we stood there and talked. I told him, no, I didn't know anything about it.

So he said, well, you get the fellows - talk to the fellows to vote for the union out, they wasn't going to get in there; they wasn't going to have no union.

I told him, "I don't know these fellows here now like I did the older fellows when I was here before." I said, "I don't know these fellows here."

202

So he walked on off.

Q. Let me see if I understand you correctly, what your testimony is. He asked you to talk to the fellows? A. That's right.

Q. I'm sure you said it, but I'm not clear. Why did he ask you -

MR. KENNEDY, SR.: Just a minute. I submit, may it please the Hearing Officer, that if Counsel is not clear, the best way to do it is to have the record reread, not to supplement the witness' testimony by his own statements.

TRIAL EXAMINER: Counsel has made no statement, Mr. Kennedy. He has asked the witness to repeat, because the answer was not altogether

coherent what Mr. Byer asked the witness to do. The witness may repeat it.

THE WITNESS: He told me — He asked me to talk to the fellows to vote the union out if it happened to come in. So I told him, I said, "I don't know these fellows here like I did the older fellows that were here when I was here before."

So he said, "You can talk to them."

And he walked on off.

BY MR. BAKER:

Q. Did you have any other conversations with Mr. Byer, Herbert Byer, after that? A. One.

203 Q. When was that? A. That was along about July the 18th.

Q. And where did this conversation take place? A. It was out at the river bank.

Q. How would you — What were you doing down on the river bank? A. Well, I was working. So he come through the yard while I was working there, and he said, "Come on, go with me."

Q. Did he have his car? A. His car was out on the street.

And so I went on behind him. As soon as we got to the car he said, "Get in", so we got in the car. We went down on the river bank.

Q. All right. What did you do, just park down there? A. That's right.

Q. Was anybody else in the car besides you and Mr. Byer? A. No, there wasn't.

Q. What did he say to you this time, Mr. Baker? A. Well, he asked me how many hours was I working.

Q. How many hours were you working then? A. That's right. I told him 51 hours.

MR. KENNEDY, SR.: Excuse me. What was the answer?

THE WITNESS: 51 hours.

MR. KENNEDY, SR.: Thank you.

THE WITNESS: (Continued) He said, "What is your gross?"

204 I said, "About \$76.30. . ." some cents; I didn't know the cents, but it was around \$76.00.

He said, "Now, if the union gets in here how much would it take for you to make \$76.00?"

BY MR. BAKER:

Q. How many hours would it take? A. That's right. How many hours? How much would I have to be getting to make \$76.00 gross.

I said, "Around \$1.90."

He said, "Well, you've got it all figured out, ain't you?"

I told him, no, I knew just what it would be to make \$76.00 gross, \$1.90.

He says, "If the union gets in here you won't be making that."

I said, "Why?"

He said, "It would hurt the fellows that worked regularly, and helped the guys that didn't work regularly."

So I asked him why. He said, "Well, you fellows that work regular," he said, "If the union gets in, that that will cut you down maybe to 40 hours, maybe 35 hours, 38 hours." He said, "In that way it wouldn't help you fellows that work regular. The guys that didn't want to work over two or three days a week, it would help them."

Q. Because their hourly rate would go up, is that it?

205 MR. KENNEDY, SR.: I object to this.

TRIAL EXAMINER: Sustained.

THE WITNESS: I imagine they would.

TRIAL EXAMINER: Just never mind, Mr. Baker.

Go ahead.

Ne[ver] mind, Mr. Witness Baker; go ahead, Mr. Counsel Baker.

Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

BY MR. BAKER:

Q. Did he say anything else that you recall at that time to you?

A. No, I don't - I can't remember.

Q. Well, was there any discussion about anybody being fired?

A. Oh, yes. Now, he said he was - He first said he would fire everybody he thought was for the union, and then he changed it and said, "No", he said, "I won't fire them." He said, "I'll make it so hard, they'll probably fire themselves."

Q. They'll fire themselves? A. That's right.

Q. Now, you say first he said he'd fire everybody that was for the union. You mean in this conversation, or in the prior conversation?

206 A. In two conversations.

Q. In one conversation before this? A. Yes.

Q. You testified he said he would fire everybody he thought was for the union. A. That's right. And in the last conversation he said he would fire everybody - everyone he thought was for the union, and then he said, "No", he said, "I won't fire them", he said, "But I'll make it so damn hard for them, they'll fire themselves."

Q. Now, when he was asking you how much you grossed you gave him a figure. Is that right? You said \$76.00, or something like that.

A. That's right.

Q. And he also asked you how many hours you were working, and you said 51 or 52. A. That's right.

Q. Is that right? A. Six days.

Q. And six days a week. A. That's right.

Q. Now, you stated he asked you how much you would have to make per hour to gross - A. \$76.00.

Q. And you told him you'd have to make how much? A. \$1.90.

207 Q. And that was based on how many hours? A. 40 hours.

Q. Well, did Herbie mention anything about 40 hours to you?

A. He said if the union gets in I wouldn't be making that, he'd cut it down to 40 hours or less. "You may not make 40 hours. You may not make over 35 or 38 hours."

Q. And that's when he asked you how much you would have to make per hour to make what you were making now. A. He asked that before,

how much would I have to be making an hour to make what I was making at 51 hours, and I told him \$1.90.

And so he said, "Well, if the union gets in you won't be making that. I'd have to cut you down to 40 hours or less."

MR. BAKER: You may inquire.

#### CROSS-EXAMINATION

BY MR. KENNEDY, SR.:

Q. You say you signed a union card on July the 23rd, Mr. Baker.

A. That's right.

Q. That was the night before you were fired. A. That's right.

Q. Who was with you in this grill on Central Avenue when you  
208 signed the card? A. Oh, there was several fellows there. I  
couldn't call all who was there.

Q. Was Mr. Felder there? A. Yes, he was.

Q. Mr. Greer? A. Yes, he was.

Q. Vaughn? A. I don't think he was.

Q. Who gave you the card? A. James Felder.

Q. Is that the first time anybody had talked to you about joining  
the union? A. The first time.

Q. You knew Johnny Greer, didn't you, before that time? A. I  
did.

Q. You saw him in the yard — A. Yes.

Q. — from time to time. A. I would see him come up in the office.

Q. And Johnny never said anything to you about signing a card?

A. Johnny never said anything to me about signing a card. No one.

\* \* \* \* \*

225

#### RECROSS-EXAMINATION

BY MR. KENNEDY, SR.:

Q. How long had you known Mr. Felder? A. Oh, I had been know-  
ing him for about two or three years, I guess.

Q. When did he first talk to you about the union? A. When did he  
first talk to me about the union?



Q. Yes, sir. At the American Compressed Steel. A. I hadn't seen Mr. Felder in over a year until I went down to the union hall.

Q. Down to the grill? A. That's right. Grill.

\* \* \* \* \*

228

Cincinnati, Ohio  
November 13, 1963

\* \* \* \* \*

229

SYLVESTER VAUGHN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAKER:

Q. State your name and address, please, for the record.

A. Sylvester Vaughn, 9960 Morris Street, Cincinnati 6, Ohio.

Q. Mr. Vaughn, are you presently employed by American Compressed Steel? A. No, I'm not.

Q. Were you ever employed by that firm? A. Yes, sir.

Q. When did you first begin working for American Compressed Steel? A. In October of '60.

\* \* \* \* \*

237 Q. Now, will you state whether or not you ever had any conversation with supervisors or officials of the Company regarding the union?

A. Yes, I have.

Q. Did you have more than one such conversation? A. Yes, sir.

Q. What supervisor, or supervisors were involved in the conversation?

MR. KENNEDY, SR.: I object. I think he'd better ask who he had the conversations with.

MR. BAKER: I'm sorry, I didn't understand the objection.

238 TRIAL EXAMINER: That's in answer to the question that was asked -

MR. KENNEDY, SR.: I know but -

TRIAL EXAMINER: - as to whether these men were supervisors.



All right. Ask him who the conversations were with, Mr. Baker.

BY MR. BAKER:

Q. Who were the conversations with, Mr. Vaughn? A. Herbert Byer.

Q. All of them were with Herbert Byer? A. All of them.

Q. Now, directing your attention to the first time you had a conversation with Mr. Herbert Byer regarding the union, would you tell us when that conversation was? A. It was in April, the early part of April.

Q. And where did the conversation take place? A. At the gas tank in the yard.

Q. Was anybody else around besides you and Mr. Herbert Byer? A. No one but us two.

Q. All right. Will you tell the Trial Examiner, now, what Mr. Byer said to you relative to the union, and what, if anything, you said in reply? A. He walked up as I was gassing my truck, and he said, "I heard you was one of those card holders."

239 And I asked him what did he mean by a card holder?

And he said, "Do you mean to tell me you didn't sign no card?"

And I still told him, "I don't understand what you mean."

And he said, "Well, I know you signed a card, one of those union cards, because my boys said you had."

And I said, "What boys?"

He said, "I am not going to give you no names, but I just want to let you know you're on the loser's side."

Q. Well, now, did you have any other conversation with Mr. Herbert Byer? A. During that same month of April. He approached me again and would tell me such things as, "I never had a union down here; I never will have no union down here; before I will have a union I'll close up first; and a union wouldn't do you no good no ways because it would only hurt you and your pay, because whereas you're making 40 hours a week now you wouldn't be if I had a union in here, because the way I let you work around in the yard after your truck work is done, I wouldn't."

And he said, "I've tried to be nice to you, but since you're trying to cut my throat, why should I help you?"

Q. Was this just one conversation, or was this several conversations during this period of April you're talking about? A. It was several conversations during the period of April — one out at the gas tank, another

240 he had me in his car talking.

Q. But these conversations, now, you just testified to, were they — did he just come up to you and start talking? Is that what you're saying?

A. He'd walk up to me, on his second conversation, and tell me to get in his car and go with him. And we'd ride around the yard, and he'd stop, and we had the conversation.

Q. Was anybody else present? A. Nobody but us two.

Q. Now, after that, when was the next time, if any, that Mr. Byer talked to you? A. Well, the next time I recall was in June. And I was coming through the yard in a truck. I had just picked up a load of scrap. Just as I pulled up by the garage a tire blew out. I stopped the truck, got out, and Herbert Byer walked up.

He said, "You ruined my tire."

I said, "I haven't ruined your tire." I said, "The tire just blew out."

And he said, "No, you ruined that tire." He said, "I could fire you for that, and there's nothing the union could do about it."

I didn't say nothing except, "I had not ruined your tire."

241 And he said, "Do you think the union could get you a job if I fired you?"

And which I did not answer him.

So he went on to state, "You'd better get your mind on my business and not union business."

Q. Did you have any other conversation with Mr. Byer —

By the way, do you recall in what part —

MR. KENNEDY, SR.: Excuse me. Did the witness answer that question?

TRIAL EXAMINER: Mr. Baker withdrew the question, and he's asking another one.

MR. KENNEDY, SR.: I'm sorry. Thank you.

BY MR. BAKER:

Q. Do you recall what part of the month of June you had this conversation with him about the flat tire? A. About the middle of June.

Q. Of this year. A. Of this year, '63.

Q. Did you have any other conversations near that time of the month in June? A. During that same month I had another conversation.

Q. That's again with Mr. Herbert Byer? A. Mr. Herbert Byer.

Q. Was anybody around when you had this conversation? A. No one but him and I.

242 Q. All right. Where did it take place? A. We was standing in the office.

Q. Will you tell the Trial Examiner what Mr. Byer said to you at this time relative to the union, and what, if anything, you said in reply?

A. He said he was sending me down to the Gas & Electric Company to pick up a load of scrap. He said, "You will need a helper."

I asked him who should I get?

He said, "Pick out one of your boys."

And I asked him, "What do you mean, one of my boys?"

He said, "I mean one of your union buddies."

I says, "It's your job, and I'm working for you. It's your place to pick me out a helper if you want me to have one."

He said, "I'll get you one of your buddies."

And he went out into the yard, and got Handsome Thomas. And he told me, "I don't care how much union you all talk about, I want that truck loaded when you come back."

Q. Do you recall any other conversations you had with Mr. Byer?

A. Not during that period.

Q. Did you have any — A. I had another conversation with him.

243 Q. When was that? A. That was in July.

Q. Do you remember about when in July? A. About the latter part of July, or the middle of July.

Q. All right. Where did you have this conversation? A. In the office.

Q. Was anybody else present at that time? A. Clyde Kimble.

Q. Clyde Kimble, another truck driver. A. Clyde Kimble.

Q. Now, what did Mr. Byer say at that time? A. We were standing in the office that morning waiting for him to come to tell us where to go, and he walked in the door, and touched Clyde on the shoulder and told him, "don't stand too close to him, because some of that union might rub off on you."

I looked at Clyde, and he looked at me. He went on and told us where to go to make our pickups for the day.

\* \* \* \* \*

247

## CROSS-EXAMINATION

BY MR. KENNEDY, SR.:

\* \* \* \* \*

261 Q. No, I don't mean that, sir. I mean following that. What was the next conversation you had with him? What did he say the next time you

262 talked to him? A. I was in his car. At least he told me to get in his car. We drove down the yard, and that's where he asked me, telling me about that there never had been a union down there, and there never will be a union down there; before he'd have a union down there he'd close up; and that if there was a union there it wouldn't do me any good, because it would only hurt me and my pay, because where I was working 40 hours a week now I wouldn't, because he wouldn't let me work in the yard like they have been when my truck work was done; and he has been trying to help me, and was nice to me, but since I was trying to cut his throat he wouldn't any more.

Q. And that was in the car, huh? A. In his car.

\* \* \* \* \*

312

Cincinnati, Ohio  
November 14, 1963

\* \* \* \* \*

326

## JAMES FELDER

a witness recalled by and on behalf of the General Counsel, resumed the stand, and further testified as follows:

\* \* \* \* \*

330

## CROSS-EXAMINATION

BY MR. KENNEDY, SR.:

Q. Mr. Felder, I show you a document which has been marked for identification Respondent's Exhibit 7, which is a copy of a petition which your union filed in Case No. 9-RC-5377. Originally you signed the original petition which was filed with the Board.

331

(Document handed to witness.)

A. Yes.

BY MR. KENNEDY, SR.:

Q. You state in there, in that petition, that you made a demand for representation on the unit on August - on April 18, 1963, did you not?

A. Yes.

Q. That demand was made in the form of a telephone call or a letter, or both. A. Both.

Q. Both. A. Yes.

Q. You made the telephone call, didn't you? A. No.

Q. Who did? A. Yates made the telephone call.

Q. Do you know to whom Mr. Yates talked? A. Well, I was in the office when he called. I don't know exactly, no, who he talked to.

Q. Did Yates tell you what the reply to his demand was? A. Yes.

MR. BAKER: I am going to object if he testifies to anything that Mr. Yates told him.

TRIAL EXAMINER: Overruled.

He can answer.

332

THE WITNESS: (Continued) Yes, sir.



BY MR. KENNEDY, SR.:

Q. What did Mr. Yates say? A. Mr. Yates told me that he talked to Mr. Byer.

Q. What did Mr. Byer tell Mr. Yates, according to Mr. Yates?  
A. He told him that he didn't know who he was talking to, and furthermore as far as he was concerned that he didn't know anything about a union, and he was not interested in talking to him, and hung up.

Q. What was the date of your letter to the Company? A. The letter was, if I can recall - I know it was on a Thursday.

Q. Thursday of the week of the telephone call? A. Wait, I'm sorry. The telephone call - we made the telephone call on Thursday - Wednesday - I'm sorry - and the letter was sent out on Thursday. I'm not definitely, now, but I'm pretty sure it was on Friday that we sent this letter to Mr. Byer, a registered letter.

Q. A registered letter. A. Yes.

Q. And the petition was filed the following - on the 22nd. A. On the 22nd, yes, the following day he called. Surely he got the letter, because it was a registered letter. We called him first, and then sent a registered  
333 letter, and then I came down and filed the petition.

Q. You sent the letter after Mr. Byer told Mr. Yates to the effect he wouldn't have anything to do with the union. Is that correct? A. Correct.

Q. The Company never answered that letter. A. No.

Q. Based upon Mr. Byer's refusal to recognize the union, you then filed a petition. A. Correct.

Q. Is that right? A. Correct.

Q. How many cards did you present to the National Labor Relations Board? A. At the time, I think it was about 27 or 28, because the Board stated only 30%, and I think with our petition I submitted about 27 or 28 and kept the rest for my file.

Q. You thought at that time there were 44 or 45 people in the unit.  
A. I had good reason, yes.

Q. Please? A. Yes.

Q. You so stated in your petition. A. Yes, sir.

334 Q. So you had better than 50% of the number of cards which were required under the Board Rules. A. Correct.

Q. Of the —

TRIAL EXAMINER: I didn't understand that question.

MR. KENNEDY, SR.: He had — Excuse me. I'm sorry, I misstated the question.

BY MR. KENNEDY, SR.:

Q. You had better than 50% of the number of employees in the unit. How many cards did you hold back? A. I think I held back about eight cards.

Q. About eight cards. A. Yes, sir, roughly.

\* \* \* \* \*

367

ALDEN C. HIBBARD

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

\* \* \* \* \*

368

DIRECT EXAMINATION

BY MR. KENNEDY, SR.:

\* \* \* \* \*

371

Q. What is your occupation? A. Welder.

Q. Will you keep your voice up, now, Mr. Hibbard.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

BY MR. KENNEDY, SR.:

Q. By whom are you employed? A. Now?

Q. Yes. A. By the Consolidated — I mean — Consolidated — SPECTATOR MR. ABE BYER: Constellation.

THE WITNESS: (Continued) — Constellation Steel Company.

BY MR. KENNEDY, SR.:

Q. Here in Cincinnati? A. Yes, uh huh.

Q. On September 18, 1963 were you an employee of the American

Compressed Steel Company at its yard on East Front Street in Cincinnati, Ohio? A. When?

Q. September 18, 1963. A. Yes, sir.

\* \* \* \* \*

379

# CROSS-EXAMINATION

BY MR. BAKER:

\* \* \* \* \*

386

Q. Now, you say that Johnny said to you, "Did you see Mr. Byer hit me?" or words to that effect. A. Yes, sir, a little later on he did.

Q. Isn't it true that you replied to him that you wouldn't take that if it were you? A. I probably agreed with Johnny, because I actually wasn't paying too much attention to what Johnny was — he said something about the conditions, the working conditions, and I just figured it could have been — he was talking about the weather — I didn't know, I mean I just told him I might have agreed with him, yeah.

387

Q. I didn't ask you if you agreed with him. I just asked him if you said you wouldn't take that. Did you use those words? A. I don't remember whether I used those exact words or not, no.

Q. Do you think you said something like that? A. Well, I could have. I don't remember the exact words, I mean at that time, you know, I mean I didn't know all this was coming up, and I don't remember the exact words, how I worded it. As a matter of fact, I don't exactly remember what was said.

Q. You knew it was coming up pretty quickly. You made a statement that afternoon, did you not? A. Later on that afternoon, yeah. But I mean — what I mean is when a man is working, he don't notice every little thing going on.

Q. Do you say — Did you agree with him that the working conditions were bad? Is that what you're saying? A. I agreed on the weather; it's bad in the wintertime. I mean it's hot in the summertime, and it's cold in the wintertime.

Q. And this was in the wintertime? A. No; this was in the summertime.

Q. And you've never worked there in the wintertime, have you?

388

A. No, sir.

Q. But you were projecting yourself into the next winter, and agreeing that winter working conditions would probably be bad. Is that what you're testifying to? A. Well, I have worked on the outside for the last three winters, and I know it's bad in the wintertime.

Q. But this was a warm day. A. This was a warm day, yes, sir.

Q. But you and Johnny were talking about the winter. A. No, we wasn't talking about the winter. He was just talking about the conditions.

Q. Well, you stated, though, that it was weather conditions you were talking about. Isn't that true? A. Well, I said I just presumed that everything was in general. I mean —

Q. All right. I can understand that, Mr. Hibbard.

Now, you didn't remember about this statement — You didn't remember this statement about "I hope I'm not interrupting" when you gave your statement to the Labor Board, did you? A. I don't remember whether that's in the statement or not to the Relations Board.

Q. Now, when — you told the National Labor Relations Board you were hard of hearing. Isn't that true? That you just heard some mumblings. A. I probably did. I told the Relations Board I was hard of hearing, yes, sir.

389

Q. That you didn't hear what was said in the truck. A. I don't remember — I don't remember whether I told the Relations Board I had heard what Herb said when he come in or not. I mean I do know, "I hope I'm not interrupting". I don't know whether I told the Relations Board that or not. I mean that is all I heard.

Q. Do you remember if you heard that or not? A. I don't understand the question.

Q. Do you remember if the gentleman taking your statement, Mr. Joseph P. Perry, asked you if you heard Mr. Byer say something about "I hope I'm not interrupting"? A. No, I don't remember him asking me anything like that, no.

Q. You don't remember him asking you that? A. (No response.)

Q. And you don't remember whether or not you told him. A. (No response.)

Q. I will show you this affidavit here. I believe that this is your statement, is it not?

(Document handed to witness.)

A. Yes, sir.

\* \* \* \* \*

398

### EXAMINATION

BY THE TRIAL EXAMINER:

Q. Mr. Hibbard, when Mr. Byer got in the truck did he seem to you either angry or irritated about something? Was he mad? A. No, sir, not as I — not as I recall. I mean —

\* \* \* \* \*

400

### HERBERT I. BYER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

### DIRECT EXAMINATION

BY MR. KENNEDY, SR.:

Q. State your name and address, please. A. Herbert I. Byer, 4040 Beechwood.

Q. Mr. Byer, be at ease and speak with your voice up and direct it, please, in the direction of Mr. Baker.

What is your occupation? A. I am foreman of the American Compressed Steel located on East Front Street.

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422 Q. Did you have an employee named Deopholis Jenkins? A. Did I have one —

Q. I think they called him Tom Jenkins. Yes. A. Did I have —

423 Q. Did you have any employee by that name? A. Yes, we did.

Q. What was his occupation? A. He was a —

Q. Truck driver? A. As of what date would you like to know his occupation?



Q. Well, on the day he quit. A. The day —

Q. July 29. A. That was the last day he worked?

Q. Yes. A. On that date, he was qualified to run tractor-trailer, Tyler truck. Well, he was a truck driver operator, and he was able to operate just about — let me think a minute — I'll see if he was able to operate all the —

TRIAL EXAMINER: What was he actually doing, Mr. Byer? What was his job?

THE WITNESS: Driver.

TRIAL EXAMINER: What was he doing? What was his day-to-day work?

THE WITNESS: Truck driver, mostly.

TRIAL EXAMINER: Any particular truck?

THE WITNESS: No particular truck.

TRIAL EXAMINER: All right. Go ahead, Mr. Kennedy.

BY MR. KENNEDY, SR.:

424 Q. Could he operate a Tyler truck? A. Yes.

Q. Immediately after Jenkins left his employment, what change, if any, did you make in the assignment of jobs to truck drivers, with special consideration to the assignments given to John Greer? A. On what date are we talking about?

Q. After Jenkins left. July 29 is the date. The important thing — it is not so much the date as the fact that Greer — that it happened after Jenkins left. A. All right.

Q. Was any change made in Greer's status? A. No; he was a truck driver.

Q. Are you able to tell us, Mr. Byer, what change, if any specifically was made so far as the assignment of Greer to driving a Tyler truck, for the purpose of picking up cans, is concerned? A. Any change?

Q. Any change made in his status after Jenkins left. A. He made a few more pickups per week after Jenkins left than what he made while Jenkins was still with me.

Q. Are you able to state the number of —

MR. KENNEDY, SR.: Well, let me strike that out, please.

BY MR. KENNEDY, SR.:

425 Q. This pickup of cans is made entirely with Tyler trucks, is it not? A. Correct.

Q. Is there any difference in the kind of cans, which you get, the nature of the material which you get as to being clean or incinerated?

A. Well, we pick up both kinds of cans. We pick up incinerated cans, and we also pick up cans off of dumps where they don't have incinerators.

Q. Is the method of handling incinerated cans, and non-incinerated cans the same? Is there any difference in the way they're handled in the manner of pickup and hauling to your yard and dumping them? A. No, sir.

Q. Are you able to tell us what the record of the company shows with reference to Mr. Greer's job assignments so far as can deliveries are concerned before July 29th and after July 29th? A. Yes, I have the record right here.

Q. Will you tell us what the record discloses, please? A. Well, do you just want to know the number of pickups he made?

Q. Just tell us the number of pickups of cans which Greer made before July 29 and which he made after July 29.

MR. BAKER: May I have a question or two on Voire Dire?

426 TRIAL EXAMINER: Even before you do, Mr. Kennedy, do you want the total number of times that Greer picked up cans in fourteen years of employment?

MR. KENNEDY, SR.: Oh, no, I'm taking — Mr. Trial Examiner, I'm taking a, what I feel —

TRIAL EXAMINER: I didn't think you did, but I don't think your question was clear.

MR. KENNEDY, SR.: I'm sorry. I'm sorry.

TRIAL EXAMINER: Suppose you rephrase it.

MR. KENNEDY, SR.: I shall rephrase the question.

TRIAL EXAMINER: And, then there may not be objection. Let's have a clear question first.

BY MR. KENNEDY, SR.:

Q. Mr. —

MR. KENNEDY, SR.: Could we go off the record a minute?

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

Do you want to rephrase that question, Mr. Kennedy?

BY MR. KENNEDY, SR.:

Q. At my request, Mr. Byer, did you prepare a statement of the job assignments to John Greer, for a period — job assignments of John Greer, on can pickups for a period immediately before and a period immediately after July 29, 1963? A. Yes.

427 Q. Do you have that with you? A. Yes, I do.

Q. Will you state to the Trial Examiner what pickups — what can pickups Mr. Greer had before that date and after that date over a period of — Strike that.

How many weeks did you go back before July 29? A. I went back to the week of May 25th, through June — or February 25th to March 1st. I started with that week and came all the way through until the last week that he worked.

Q. Are they in summary form? Have you got them summarized? A. That's right.

Q. All right, will you state to the Board — Wait before you answer that. Mr. Baker, I think has a question.

MR. BAKER: I wonder if I might ask a question or two on Voire Dire?

TRIAL EXAMINER: Do you want to ask right now?

All right, go ahead.

MR. BAKER: Well, may it please the Trial Examiner, I was wondering if he was just going to testify as to his memory, or testify from his document. If he's testifying from memory, then, of course, I guess cross-examination would be the proper time. If he's identifying this document for purposes of entering it into —

428

MR. KENNEDY, SR.: No, I am not going to enter it into the record.  
Are we off the record?

MR. BAKER: No, we're on the record.

TRIAL EXAMINER: We're on the record.

MR. KENNEDY, SR.: That's all right. I didn't intend to identify it.

This is an informal -

THE WITNESS: Here's some more.

MR. KENNEDY, SR.: - document, as Counsel will see, -

(Documents handed to Counsel for General Counsel.)

MR. KENNEDY, SR.: - which was prepared from records which  
are also here and available for General Counsel's inspection.

MR. BAKER: May I have just one or two questions before he puts  
this in the record, or do you think it would be in order - I'll be glad to  
wait until -

TRIAL EXAMINER: Before he puts it into the record, you say?

MR. BAKER: I'll wait.

TRIAL EXAMINER: He's not planning to put this in the record.

MR. KENNEDY, SR.: I'm not planning -

TRIAL EXAMINER: You may have a good deal of question about it,  
Mr. Baker, but I don't see any point in interrupting the examination right  
now.

Go ahead, Mr. Kennedy.

429

BY MR. KENNEDY, SR.:

Q. Will you tell the -

TRIAL EXAMINER: Subject to objection, of course, Mr. Baker; if  
you want to object to the question. I just don't want you to start examin-  
ing the witness at this point.

Go ahead.

BY MR. KENNEDY, SR.:

Q. Will you show what the - You are reading from a document now,  
which you hold, Mr. Byer, and tell me from what that document - what that  
document shows. First of all, what does this document you're reading from  
show? A. It shows how many pickups Mr. Greer made from the period

of the end of February up until the time that he left our employ, the type of truck that he drove, whether it be a Tyler truck, a trailer, a Tyler truck for a dump pickup, a straight truck, dumpster, Ross carrier, or flat truck.

Q. Now, I'm only concerned here-now - Can you give me just what the record shows as to the pickup of cans by Mr. Greer in this period before July 29 and after July 29?

MR. KENNEDY, SR.: I might say to the Trial Examiner that the testimony here is by Mr. Greer - he had 10 and 90 percent. This is to show what the records of the company indicate. That's why I'm introducing it this way.

BY MR. KENNEDY, SR.:

430 Q. Can you limit your testimony just to the pickup of cans, Mr. Byer? A. Yes, I broke it down - any way you want it.

Q. Tell us the number of pickups he had of cans -

MR. KENNEDY, SR.: May we go off the record?

TRIAL EXAMINER: All right. Off the record.

(Discussion off the record.)

TRIAL EXAMINER: Back on the record.

BY MR. KENNEDY, SR.:

Q. Give us this information you have prepared. A. Starting from - all right - I'll start from February the 25th, the week of February 25th through March the 1st.

Q. Now, excuse me, will you give us a date as a week ending date, please? A. All right. Fine.

Week ending 3/1/63 he made no Tyler pickups at dumps.

The week ending 3/8/63, he made three Tyler truck pickups at dumps.

The week ending 3/15/63, he made no Tyler pickups at dumps.

Q. Excuse me. Any number you're giving would indicate the number of Tyler pickups of cans at dumps. Just give us the date and number.

TRIAL EXAMINER: March 22nd, how many?

THE WITNESS: March 22nd, zero.



431 TRIAL EXAMINER: 29?

THE WITNESS: Zero.

BY MR. KENNEDY, SR.:

Q. April? A. April 5th to April 12th, zero. April 19th, zero. April 26th, one. April — No, this would be May.

May 3rd, none. May the 10th, one. May 17th, one. May 24th, one. May the 30th-31st, I'm not sure of that. The week ending that date, zero.

June the 7th to June the 14th, one. June the 21st, two. June the 28th, one.

July the 5th, three. The 12th, July 12th, two. July 19th, one. July 26th, zero.

August 2, two pickups. August 9th, none. August the 16th, one. August the 23rd, three. August the 30th, five.

September the 6th, one. September the 13th, four. September 20th — I'm not sure of the exact date there, because I'm not sure, he quit, actually the day before, but the week — it might have been the 19th, two or three.

Now, the reason I am unable to give the exact figure there, one of the pickups, I believe the man never made. Our record shows for three, but he never actually made the third pickup.

Q. Now, did you total those, Mr. Byer? A. No, I did not.

432 TRIAL EXAMINER: We can total them, Mr. Kennedy.

MR. KENNEDY, SR.: All right.

BY MR. KENNEDY, SR.:

Q. All right. Now, are you able to give us the total number of pickups which he made prior to July 29, of all classes of pickups? A. I have it listed by weeks, just the same as I gave it to you on the other.

Q. Can you give us a total by week of the other pickups, all the pickups? A. Yes, sir.

Q. All right. Go ahead. A. 4/5 - 6.

Q. Excuse me. A. The week ending —

TRIAL EXAMINER: Week ending April 5th — six pickups in all?

THE WITNESS: No, in all, it would have been eight.

TRIAL EXAMINER: Six plus —

THE WITNESS: Six, plus the two pickups.

BY MR. KENNEDY, SR.:

Q. This figure will be the pickups in addition to the can pickups.  
Is that right? A. All that my record shows.

Q. Yes. A. But it might —

433 Q. Go ahead. I'm sorry. Go ahead. Go ahead. I was going to ask  
this question later, but go ahead and put it in now since you started. Go  
ahead. A. This record does not show pickups that Larry Byer might  
have sent him out on for non-ferrous pickups, which would not have been  
dump pickups. Any dump pickups that he would have made, would be on  
this record.

Q. Okay. A. This number could actually be more.

Q. This is a record of pickups he made for you in the ferrous divi-  
sion? A. Pickups that were determined by me, so I would call down to  
him, and say, go make this, that or the other.

TRIAL EXAMINER: But, now, Mr. Byer, what you are about to give  
us are pickups other than at dumps?

THE WITNESS: Other than at dumps.

TRIAL EXAMINER: All right.

BY MR. KENNEDY, SR.:

Q. There are no pickups of cans except at dumps, are there?  
A. No pickups of cans other than dumps.

Q. Go ahead. A. 4/5 - 6 pickups; 4/12 - 9 pickups; 4/19 - 4 pick-  
ups; 4/26 - 3 pickups.

434 5/3 - 8 pickups; I didn't start on the first sheet. I'm actually back-  
tracking here.

TRIAL EXAMINER: That's all right. I suggest you go right ahead  
and if you have no objection, let's skip March.

THE WITNESS: (Continued) 3/1 —

TRIAL EXAMINER: I say, skip March. Go ahead to May.

THE WITNESS: All right.

TRIAL EXAMINER: Any objection, Mr. Baker?

MR. BAKER: No objection.

TRIAL EXAMINER: Go ahead.

THE WITNESS: (Continued) 5/10 - 5 pickups; 5/17 - 7 pickups;  
5/24 - 10 pickups; 5/30 or 31 - 5 pickups.

6/7 - 8 pickups; 6/19 - 8 pickups -

TRIAL EXAMINER: What was that? 6/14?

THE WITNESS: 6/14.

TRIAL EXAMINER: Yes. All right.

THE WITNESS: (Continued) 6/21 - 12 pickups; 6/28 - 11 pickups.  
7/5 - 7 pickups; 7/12 - 10 pickups; 7/19 - 7 pickups; 7/26 - 9 pickups.  
8/2 - 13 pickups; 8/9 - 12 pickups; 8/16 - 8 pickups; 8/23 - 14 pick-  
ups; 8/30 - 11 pickups.

September 6 - 5 pickups; September 13th - 6 pickups; September  
the 20th - 19. I'm not sure of the date, actually he left the day before - 6  
pickups.

BY MR. KENNEDY, SR.:

435 Q. What change, if anything, was made in Mr. Greer's status so far  
as assignments -

MR. KENNEDY, SR.: Let me rephrase the question please.

BY MR. KENNEDY, SR.:

Q. What change so far as assignments to driving semis was made,  
in Mr. Greer's status, after - if any, after Jenkins left the employment  
of the company? A. I would have to check my record. I could give it  
to you faster, if you wanted me to. But, I think he made a few more pick-  
ups on Tyler trucks at dumps, more than he normally would have made in  
the past when Jenkins was with us, because Jenkins was better suited for  
that work and did that more often, and after Jenkins left, there was only  
one or two other men that were qualified to operate the truck, and there-  
fore Johnny got a few more pickups, very few more, but a few more pick-  
ups at dumps with the Tyler truck than before.

Now, this wasn't - I mean, some weeks maybe he wouldn't get any-  
more. There were some weeks there he didn't have any, or one.

Q. What policy did you follow with reference to assignment to Greer

of picking up incinerated cans, as against non-incinerated cans? A. Will you state that question again?

Q. Yes. What policy did you have, whether Greer would be assigned to pick up a box of incinerated cans or a box of non-incinerated cans?

436 A. Well, the policy was, whoever would call for a pickup from a dump, we would send the first available driver out to make the pickup; whether it be incinerated type cans, or other type dump can; it wasn't necessary. Whoever called for a pickup that's where we sent them.

Q. Could any driver, or any man manage a Tyler truck? A. No, the man had to be qualified on this particular truck to make the pickup. We couldn't send any particular man to pick it up, this truck; the man had to be qualified to operate the Tyler truck to make the pickup. A regular driver could not make the pickup.

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442 TRIAL EXAMINER: You think your irritation showed, Mr. Byer?

THE WITNESS: Yes, sir. I think it did.

\* \* \* \* \*

448 BY MR. KENNEDY, SR.:

Q. Will you tell the circumstances under which he was discharged?

A. He was discharged for leaving his gages and valves on top of his tanks open the night before.

Q. Well, let me ask you this. What was Mr. Baker's classification?

A. Burner, iron sorter.

Q. Describe briefly the burning operation. What does the burner do?

MR. BAKER: Mr. Examiner, in deference to speed, I think we have gone through this pretty thoroughly.

MR. KENNEDY, SR.: Is this in the record?

TRIAL EXAMINER: I think it is understood, Mr. Kennedy.

MR. KENNEDY, SR.: Is the Trial Examiner satisfied?

TRIAL EXAMINER: I am satisfied.

BY MR. KENNEDY, SR.:

449 Q. The tanks that you refer to are the tanks of gas that is used by the burner in his burning operation? A. Yes. And oxygen.

Q. And oxygen. A. Yes.

Q. And, what orders, if any had you issued to Mr. Baker as to keeping his gas, gasses and oxygen lines shut off, the valves shut off when he left his work station?

MR. BAKER: I think I will object to that question. The answer must be fairly obvious after the question.

TRIAL EXAMINER: Overruled. The question seems to be proper.

What instructions, if any, had you issued to Mr. Baker about the gas tanks?

THE WITNESS: I had told Mr. Baker on at least two different occasions that when he left his position of burning, assorting iron, that he was supposed to shut off his tanks and the regulators when he left for the evening.

BY MR. KENNEDY, SR.:

Q. What is the reason behind the rule that these valves should be shut off when not in use? A. Well, there's actually two reasons. There's a danger hazard because of the possibility of a hose bursting during the evening, which has happened on numerous occasions if a man forgot to shut off his tanks, and the cost of the oxygen and the acetylene to the company.

450 Q. What did you say to Mr. Baker at the time you discharged him?

A. I told him that I couldn't tolerate him not doing his job properly in shutting off his tanks, and that I hated to see him go, he was an awfully good man, but I was going to have to let him go because I had warned him before and I just couldn't tolerate it, and I had warned all the other men, too, that were burners.

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469

# CROSS-EXAMINATION

BY MR. BAKER:

\* \* \* \* \*

483

TRIAL EXAMINER: Your remarks that have not been withdrawn will be stricken.

Go ahead, Mr. Baker.



BY MR. BAKER:

Q. Now, you did testify that on one occasion there was a flat tire, and you became angry. On another occasion, there was a man in the rest-room, and you became angry. Another occasion a fellow employee had failed to pull some leads up into a truck, and you became angry. And, another occasion where a man had some flats out on the road, and you became angry. Another time, where there was a dry differential and you became angry.

Yet you testify here that — Or, is this your testimony that in any of these discussions you had with your employees that you never once became angry? A. I didn't say I didn't become angry.

Q. Well, did you become angry? A. Yes, many times. I'd become angry if my men didn't do what was a proper job. I get angry.

Q. I'm talking about in discussing the union. Did you ever become angry? A. The subject never came up at anytime that I was angry. Is that what you're getting at?

Q. Well, were you always angry when there were flat tires, or did you get angry because there were flat tires? A. I would get angry if a  
484 man ran a tire flat after he had the flat and a blowout and tore up a tire that was quite expensive to our company after he had been told not to run the tire flat, or after it had blown, to stop the vehicle and call the office.

I'd become angry if a man did not do his proper job.

Q. You became angry very easy, wouldn't you say? Anything in reference to a man's job - very easily? A. No, I don't become angry easy, but if a man is not performing his duties as he knows them to be and as he's been told, I can become angry and I have become angry, and sometimes I've had to take disciplinary action. Even to the point maybe of even having to fire a man if he didn't do his job properly.

Q. Now, I'm asking you if you ever became angry in these discussions with employees about the union. A. No, sir.

Q. Never once. A. No, sir.

Q. Never raised your voice. A. No, sir.

Q. And, the reason for this is you never personally felt very strongly one way or the other. Is that correct? A. I felt that we didn't, that the men didn't need a union in our place to secure their jobs.

485 Q. Now, in the case of Robert Baker you said you discharged him because he had left the valves open. Is that right? A. The valves and the gauges.

Q. The valves and the gauges. A. Yes.

Q. And because there was a loss of gas. Is that right? A. That there was the possibility of the loss of gas and oxygen and the danger.

Q. There was no actual loss of gas, is that correct? A. I don't know, I did not — You mean at this particular time, was there any loss of gas? Is that what you're saying?

Q. Yes. Was there, in fact, a loss of gas or oxygen at the time you discharged him? A. I do not know. I do know that the — Well go ahead.

Q. Did the hose burst? A. No.

Q. Well, did anything happen, other than the fact that the valves were not turned off? A. The man left his station and left the valves open.

Q. That's what I say. A. That's it.

Q. Did anything else happen? A. No.

Q. No hose burst? A. No.

486 Q. And no gas escaped? A. At this particular time.

Q. At that particular time. A. No, sir.

Q. How did it come to your attention that the valves were not closed? A. I needed my yard foreman to tell him to get hold, for some reason, I told one of the employees to get hold of Mack Beech, I wanted to talk to him, I was in the office and when Mack came into the office, it was around, a few minutes after 5:00 o'clock, and there were still men in the office, and he reported to me that Mr. Baker had left his tanks open and his gauges open, had not shut them off, and I told him, I said, "I am going to talk to Mr. Baker. I've had enough of this, and I am going to talk to Mr. Baker", or something to that effect. Mack Beech came into the office and told me that the tanks were open, left open.

Q. Now, you testified though that the hose had burst on numerous occasions, is that right? A. On at least several different occasions, the hoses had burst.

Q. By somebody leaving the valves open. A. That's right.

487 Q. Was that Mr. Baker that left them open? A. I do not know. I do not believe so.

Q. Were those other men all discharged? A. They were warned not to — about it. One particular station there's about three or four men burning at different times, and I had no way of know[ing] exactly which man it was or who should be disciplined, but I informed all the men, all the burners that in the future, all the tanks and regulators would have to be shut off when they left that station for the evening.

\* \* \* \* \*

495 Q. Now, did you hire a new man to drive the semi that Greer had been driving in the latter part of July? A. Did I hire a man — Greer was not assigned to any one truck.

Q. Greer did drive a semi, didn't he? A. He drove tractors and trailers for us.

Q. Yes. A. Yes.

Q. Now, you hired a new driver in the latter part of July that was running a tractor-trailer for you? A. The latter part of July? Without checking my records, I know the latter part of July we put on a new man. I don't know who.

TRIAL EXAMINER: There's some evidence that a man named Jenkins left about that time. Do you remember replacing him?

THE WITNESS: Sure, we would have put on somebody else.

\* \* \* \* \*

504 Q. Now, you state that you made these — this is a summary and I'm referring to — they were marked for identification — I don't believe they were — it's a summary of the number of trips made in the Tyler trucks.

Now, I notice that you have listed on here the Tyler, the trailer, the dumping trailer — A. Dumping Tyler.

505 Q. Dumping Tyler. Do you have more than one Tyler truck; do you? A. What I've got listed. I've got more than one Tyler truck.

Q. Are all of these alike? A. Yes, sir.

Q. How many Tyler trucks do you have, Mr. Byer? A. Two trucks.

Q. Two trucks? A. That's right.

Q. Are both of them used to haul cans? A. Yes, sir.

Q. Now, you have them separated here as dump Tyler and just plain Tyler. A. Well, what I meant, or what that indicates is that the

Tyler pickup is other than dump, and the Tyler pickup that is dump for tin cans, at the dump.

Q. Oh - dump. A. Understand?

Q. You say dump here. There are the trips that were made to the dump. To the can dump. A. With the Tyler truck.

Q. With the Tyler truck. A. To the dump.

506 Q. To the dump. A. To pick up tin cans.

TRIAL EXAMINER: There were other trips with the Tyler, which were not to the dump, which you have entered separately?

THE WITNESS: Right.

TRIAL EXAMINER: Is that right?

THE WITNESS: That's right.

TRIAL EXAMINER: All right. Go ahead.

BY MR. BAKER:

Q. Now, did you in your regular records, keep a record of every trip that every man made where he went and so forth? A. Any truck that was dispatched from our main office, there was a record on the truck.

Q. Was there any record on the driver? A. Yes, sir.

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510

# REDIRECT EXAMINATION

BY MR. KENNEDY, SR.:

\* \* \* \* \*

511 Q. Does the operation of a Tyler truck involve any period of training? A. Yes, sir.

Q. What period of training? A. Well, in actual hours, I would say that a man - it would depend upon the ability of the man that was trying to learn.

512 Q. Well, normally. A. Well, anywhere from an hour, maybe, to two days, depending upon the man.

Q. What is your policy with reference to the use of your truck drivers?

TRIAL EXAMINER: He indicated in his earlier testimony that certain men were not qualified to be sent out on the Tyler truck.

MR. KENNEDY, SR.: Thank you.

BY MR. KENNEDY, SR.:

Q. If you had seen, or followed Mr. Vaughn and other employees, in the middle of July, sometime in July, 1963, you would recall it now, wouldn't you? A. Yes, sir.

Q. Does Mr. Larry Byer assign Tyler trucks from his non-ferrous department for the purpose of picking up cans?

TRIAL EXAMINER: If you know.

THE WITNESS: No, sir. Not unless he receives order from the main office, or from me or Tom Olin, and which we would mark down on the sheet. The plant would call up, or the customer would call us, and we would put the pickup on the sheet. Then, whoever sent him out would have to go onto the sheet and mark who made the pickup.

\* \* \* \* \*

513

ABE BYER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

#### DIRECT EXAMINATION

BY MR. KENNEDY, SR.:

Q. State your name and address, please. A. Abe Byer, 4040 Beechwood Avenue.

Q. Cincinnati, Ohio? A. Cincinnati, Ohio.

Q. What is your occupation? A. Scrap iron dealer.

Q. Are you the president of American Compressed Steel? A. Yes, sir.

Q. Were you present in the yard on the day that has been discussed here in the testimony that — the day before Robert Baker was discharged? A. I was.



Q. Where were you with reference to Robert Baker's work station?

514 A. I was standing approximately 30 feet from his work station.

Q. Were you there at or about his quitting time? A. I was there at his quitting time.

Q. State what you saw. A. I saw Mr. Baker leave his station and go to the office and ring out, and about two or three minutes after he left his station, one of my men, Mr. Mack Beech, come walking by me and walked up to those tanks in his station and started turning the knob which had been left open on those tanks.

Q. The knob is the valve which they talk about here? A. The control valve. Yes.

Q. Did he check the valves at the burner? A. Only the main tank is necessary to turn off.

Q. How long after Mr. Baker had left his work station, did Mr. Beech do this? A. Within five minutes.

Q. And, you were there during all this time? A. Absolutely.

MR. KENNEDY, SR. That's all.

TRIAL EXAMINER: Mr. Baker?

MR. BAKER: I have no questions.

TRIAL EXAMINER: Thank you, you're excused.

(Witness excused.)

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R. KENNETH JONE  
REGISTRY NO. 1754

1800 LINN STREET

PHONES: OFFICE 241-3285; RESIDENCE 961-4172  
OFFICE HOURS: 2 TO 5 AND 8 TO 1:30 P.M.

CINCINNATI, OHIO

EXHIBIT A

FOR Mr. Johnny Green  
ADDRESS 1118 Dayton St DATE 9-19-63

Rx

To whom it may concern:  
The above patient was  
examined and treated by  
me at this office this P.M.  
for bruised & tender area  
with discoloration over right  
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GC 6

9-CA-2937/2468  
Case No. \_\_\_\_\_ OFFICIAL EXHIBIT No. GC 6

Disposition

Identified ✓  
Received ✓  
Rejected \_\_\_\_\_

In the matter of Green Corp. Steel Co  
Date 11/12/63 Witness Green Reporter 957  
No. Pages 1

TXD-10-64  
Cincinnati, Ohio

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF TRIAL EXAMINERS  
WASHINGTON, D. C.

AMERICAN COMPRESSED  
STEEL CORPORATION )

and )

INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS  
OF AMERICA )

and )

LOCAL 152, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA )

Case No. 9-CA-2932

Case No. 9-CA-2968

\* \* \* \* \*

TRIAL EXAMINER'S DECISION

Statement of the Case

These cases, consolidated by order of the Regional Director, were heard at Cincinnati, Ohio, on November 12-14, 1963,<sup>1/</sup> pursuant to charges filed August 7 and September 19 and complaints issued September 20 and October 18. At issue are whether Respondent committed various acts of interference, restraint, and coercion, discriminated against three employees because of their union activity, and unlawfully refused to bargain with the Union which represented its employees. Upon the entire record,<sup>2/</sup> including my observation of the witnesses, I make the following:

<sup>1/</sup> All dates herein refer to 1963 unless otherwise indicated.

<sup>2/</sup> But without the assistance of briefs from any of the parties, although time for filing such briefs was extended to the date requested by counsel for Respondent.

## Findings of Fact

## I. The business of the Respondent and the labor organizations involved

Respondent, a New Jersey corporation, herein called the Company, is engaged in processing and selling scrap metal in Cincinnati, Ohio, annually ships in excess of \$50,000 worth of goods and products to points outside that State, and is engaged in commerce within the meaning of the Act. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and its Local 152, are labor organizations within the meaning of the Act.

## II. The alleged unfair labor practices

## Introduction

The Union started to organize the Company's employees in mid-March 1963. By mid-April, a number of employees had signed authorization cards, and the Union requested recognition, but the Company refused. The Union promptly filed a representation petition, which went to hearing but was later dismissed because of the charges filed in the instant proceeding. General Counsel alleges that the Company committed various acts of interference, restraint, and coercion, that it discharged three employees (directly in one case, and constructively in two others) because of union activity, that its refusal to bargain was based on a desire to undermine the Union rather than on a good-faith doubt of majority, and that an appropriate remedial order should issue, directing, inter alia, that the Company reinstate the three employees with backpay and bargain with the Union. The Company denies committing any of the alleged unfair labor practices.

A. Interference, restraint, and coercion

The president of the Company is one Abe Byer, whose two sons, Herbert and Larry, are foremen or managers and admittedly supervisors within the meaning of the Act. The complaint attributes various acts and statements of interference, restraint, and coercion to Herbert Byer, one such statement to Larry Byer, and one such statement to one Goodwin,

alleged to be a supervisory employee, and so found in the aborted representation proceeding. Larry Byer impressed me as a thoroughly credible witness and I fully credit his testimony in which he denies making the statements attributed to him. Although Goodwin was not called as a witness, the sole testimony attributing unlawful interrogation to him came from one Johnson, whose testimony in critical respects differed sharply from his pretrial affidavit. I therefore make no finding adverse to the Company based on Johnson's testimony. As noted below, I find violations of the Act based on the conduct and statements of Herbert Byer, and any further violation by Goodwin would be only cumulative. If, on the other hand, I am in error as to Herbert Byer, then the alleged interrogation by Goodwin, even if found, would be isolated and would not warrant remedial relief. In short, the following discussion of Section 8(a)(1) violations herein is confined to episodes involving Herbert Byer.<sup>3/</sup>

#### 1. Baker's testimony

Testimony concerning Byer's acts and statements came from three employees, whose later separations from the payroll are here alleged to have violated Section 8(a)(3), Robert Baker, John Greer, and Sylvester Vaughn. According to Baker, who was employed as a "burner" in the yard, Byer approached him at work about April 10 or 12, and asked if he knew anything about the Union. Baker denied any knowledge of the matter, but Byer professed not to believe him. Byer continued, according to Baker's testimony, that "he wasn't going to have no union in there; and if he'd get a union in there, he'd fire everyone he thought was for the union."

About April 27 or 28, according to Baker, Byer again approached him at work, asked if he had learned any more about the Union, and expressed disbelief at Baker's denial. Byer then asked Baker, according to the latter's testimony, to talk to the employees and get them "to vote for the union out, they wasn't going to get in there; they wasn't going to have no union."

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<sup>3/</sup> Hereinafter the name "Byer" where it stands alone refers to Herbert Byer.



About July 18, according to Baker, Byer asked him to get into Byer's car, and they took a short ride, parking on the river bank. According to Baker, on this occasion Byer learned from Baker how many hours Baker was working and what his gross pay was, and then said that if the Union came in, Baker would be making less as his hours would be cut. According to Baker, on this occasion Byer "first said he would fire everybody he thought was for the Union, and then he changed it and said, 'No,' he said, 'I won't fire them.' He said, 'I'll make it so hard, they'll probably fire themselves'."

## 2. Greer's testimony

Greer, a truckdriver, and a leading proponent of the Union, testified that on April 22, Byer told him in the course of a conversation that "there wouldn't be a union in there as long as he owned the place, and if we got a union in, he could close the place up. His father and his brother know where they could get their next meal from, but we didn't." On this occasion, according to Greer, Byer expressed disbelief when Greer denied knowledge of the Union, and added that he (Byer) knew every man who had signed a union card. Greer further testified that on this occasion Byer stated: "I can get rid of every one of you just like that and hire new fellows, but I'm not going to fire you, but I'm going to make it so damn hard for you until you quit."

In mid-July, according to Greer, he had a good deal of tire trouble on an inter-city trip in a company truck. He testified that when he returned, the first thing Byer said was "to get the union men to find me a damn job." Byer added, according to Greer, that Greer had been having trouble whenever he went on a trip and that he (Byer) had "been having trouble with you ever since you fellows started with that Union." Greer testified that Byer then shook his finger at Greer and said, "You're a big man, John, but it don't mean a damn thing to me." Late in August,

according to Greer, Byer said to him, "All your boys are leaving here, <sup>4/</sup> John; what you gonna do?"

The complaint alleges that Greer was transferred to less desirable work and that this transfer violated Section 8(a)(1). This matter is discussed infra in connection with Greer's termination.

### 3. Vaughn's testimony

According to Vaughn, a truckdriver, Byer said to him on April 5, "I heard you was one of those cardholders," and when Vaughn expressed ignorance as to what Byer was talking about, the latter continued: "I know you signed a card, one of those union cards, because my boys said you had . . . I just want to let you know you're on the loser's side." Vaughn further testified that later in April on several occasions Byer would tell him such things as "I never had a union down here; I never will have no union down here; before I will have a union I'll close up first" and a union wouldn't do you no good no ways because it would only hurt you and your pay, because whereas you're making 40 hours a week now you wouldn't be if I had a union in here, because the way I let you work around in the yard after your truck work is done, I wouldn't." Vaughn also recounted an occasion in June when he had tire trouble and Byer said to him that he ruined the tire, that Byer could fire him for it, and "there's nothing the union could do about it . . . Do you think the union could get you a job if I fired you? You'd better get your mind on my business and not union business."

### 4. Concluding findings as to interference, restraint and coercion

Herbert Byer categorically denied the various statements attributed to him, and indeed stated that he was unaware of any union activity until the Union requested bargaining in mid-April. Thereafter, according to

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<sup>4/</sup> My recollection, corroborated by my notes, is that Greer in his testimony said the word "you," not "here" as reported in the transcript of testimony. The sense of the statement, that Greer as a union leader was losing support in the ranks, is unaffected whichever word is correct. In the absence of a motion to correct the transcript, it will stand as reported. Should the parties concur in my recollection, they may stipulate for correction of the record before the Board.

Byer, his occasional comments to the employees about the Union were confined to stating reasons why he thought they did not need a union, coupled with reassurances that the matter was for them to decide as they saw fit.

We are confronted, in short, with neither more nor less than a flat conflict in testimony, and the need for resolving the credibility of witnesses. No problem is more typical, or – for this Trial Examiner, at least – more difficult than deciding which of two persons who have sworn to tell the truth is not doing so. Certain aids, sometimes present in other cases, are absent here. None of the witnesses involved (Greer, Baker, and Vaughn on the one hand, and Byer on the other) can be termed disinterested. Nothing in the testimony of any of them, insofar as it relates to the above matters, is inherently improbable. Shorn of such extrinsic or intrinsic aids in assessing credibility, one turns to the "demeanor" of the witnesses. As to this, I must state that I found Herbert Byer a puzzling witness. At times he seemed to me to be less than candid, notably when he indicated that he had not heard of the Union until mid-April, did not discuss the matter with counsel until about May 1, and never mentioned it to the employees in the interim.<sup>5/</sup> On other occasions, however, I felt that my adverse reaction to his testimony might merely reflect that his personality was less appealing to me than, for example, that of his brother Larry, who testified after him and whom I find thoroughly credible. And at some points in Herbert Byer's testimony, I felt that he was making a sincere effort to recall accurately and testify as to the exact truth.

On the other hand, I was never assailed by any doubt as to the testimony of Baker, who impressed me as an unusually fine witness, testifying with high regard for the truth as he remembered it. Faced with a conflict in testimony between Baker and Byer, I credit the former. Having

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<sup>5/</sup> Contrast Herbert Byer's grudging admission, "I think I knew an incident in one yard where the union had a union vote," with Larry Byer's candid statements that he had heard of several yards being organized, that "there were plenty of rumors buzzing," and that organizing at other yards had been going on for some time.

thus credited Baker, I likewise credit the testimony of Greer and Vaughn described above, as it is consistent with that of Baker, in the sense that they attributed to Byer statements similar to those he made to Baker.

In crediting Greer and Vaughn over Byer, I should note that in certain other respects I am not crediting their testimony. Insofar as Greer's testimony differs from Larry Byer's, I accept the latter's version. This does not seriously reflect on the overall veracity of Greer, for Larry Byer's version of their interview suggests that although Larry was discussing the impact of the union contract at another plant, Greer could easily have misunderstood him to be threatening deteriorating conditions at his own. More serious is the problem of crediting Vaughn, for, as appears below, he testified falsely with respect to his own change of employment. But the maxim "falsus in uno, falsus in omnibus" is far from absolute (Virginian Ry. v. Armentrout, 166 F.2d 400, 405-406 (C.A. 4)), and while I discredit Vaughn where his testimony concerns his job-seeking efforts, I credit his version of his conversations with Byer in which Vaughn attributes to Byer statements similar to those Byer made to Baker.

In sum, I find that Byer countered the union campaign by threats to close the plant if the Union came in, by threats to fire union adherents or to make conditions so difficult they would quit, by interrogating employees as to what they knew about the Union, and by stating that he knew who had signed union cards. This conduct on the part of Byer manifestly violated Section 8(a)(1) of the Act, and I so find.

#### B. The refusal to bargain

1. The Company refuses recognition; the representation proceeding; the unit

On April 18 the Union orally asked the Company for recognition as the statutory bargaining representative of the employees, claiming that it represented a majority. The Company replied through one of the Byers that it was not interested in talking to the Union. On the same date the Union sent a registered letter to the Company repeating its request. The Company ignored the letter, and on April 22 the Union filed with the Board a petition for certification.



In due course the representation proceeding thus initiated (Case No. 9-RC-5377) came on for hearing, after which the Regional Director on July 2 issued a Direction of Election. In the Direction of Election the Regional Director noted that the parties were in disagreement as to whether certain employees were included within the bargaining unit. Sustaining the Company's position with respect to certain employees and the Union's position with respect to others, the Regional Director concluded, inter alia, that two leadmen, the weigher and the cashier, should be excluded from the unit. With these exclusions, evidence before me establishes that as of April 25 the unit consisted of 61 employees, so that 31 would constitute a majority.<sup>6/</sup> I accordingly find, "based . . . in part upon facts certified following an investigation pursuant to" Section 9(c) of the Act (see Section 9(d)), that the appropriate unit is that found in the representation proceeding, namely, "All production and maintenance employees employed by the Employer at its place of business in Cincinnati, Ohio, including truckdrivers, but excluding the weigher, the cashier, part-time employees, watchmen, office clerical employees, and all guards, professional employees and supervisors as defined in the Act."

## 2. The Union's majority

At the time the Union demanded recognition on April 18, it believed that the unit consisted of 44 or 45, and it held authorization cards from 26 employees. It did not obtain its 31st card (i.e., enough to constitute a majority of the unit) until April 25. The Union made no further formal demand for recognition except insofar as its continued participation in the representation proceeding evidenced its continuing demand. On August 7, however, the Union filed the charge initiating this proceeding, and alleged therein that the Company committed various illegal acts, some of which have been found above to constitute unfair labor practices. The charge also alleged a violation by the Company of its bargaining obligation, stating that upon the Union's bargaining demand, the Company" refused recognition and

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<sup>6/</sup> The figure of 61 includes the inside salesman as to whom the Regional Director made no determination. Even if he be excluded, and the unit reduced to 60, the number for a majority would remain 31.



began activity to destroy the majority in violation of Section 8(a)(5) of the Act." With the filing of this charge, and the subsequent issuance of the complaint in this case, the election machinery set in motion by the Union's petition for certification was terminated and the representation proceeding was withdrawn on October 3.

### 3. Concluding findings with respect to the refusal to bargain

General Counsel introduced into evidence 31 cards signed by employees authorizing the Union to act as their bargaining representative.<sup>7/</sup> As noted above, the bargaining unit embraces 60 or 61 employees, and 31 constitutes a majority. The law is well settled that where a union in fact represents a majority of the employees (a fact which may be evidenced, as here, by authorization cards) and the employer thereafter engages in unfair labor practices which tend to undermine the Union's majority and which prevent the holding of a fair election (such as the threats and other unlawful conduct of Herbert Byer as found above) the Board may appropriately remedy the unfair labor practices and restore the status quo ante by directing the employer to bargain with the Union. See, e.g., N.L.R.B. v. Model Mill Co., 210 F.2d 829 (C.A. 6); N.L.R.B. v. Armco Drainage & Metal Products, Inc., 220 F.2d 573, 577 (C.A. 6) cert. den. 350 U.S. 838.

The instant case differs from the cases cited above in that here the Union lacked a majority at the time of its bargaining request on April 18,

<sup>7/</sup> Although the Company filed no brief, the cross-examination conducted by its counsel suggested that it might seek to challenge the validity of the cards on the theory that the signatures were procured by misrepresentations. I find, however, that the cards, which on their face designate the Union as the bargaining representative of the signatory, were validly procured, and the occasional references to the fact that they would be used to obtain an election did not mislead the employees. See Joy Silk Mills v. N.L.R.B., 185 F.2d 732, 743 (C.A.D.C.) cert. den. 341 U.S. 914; N.L.R.B. v. Gorbea, 300 F.2d 886 (C.A. 1); N.L.R.B. v. Sunshine Mining Co., 110 F.2d 780, 790 (C.A. 9); N.L.R.B. v. Geigy Co., 211 F.2d 553, 556 (C.A. 9); N.L.R.B. v. Stow Mfg. Co., 217 F.2d 900, 902 (C.A. 2), cert. den. 348 U.S. 964; Dan River Mills, Inc., 121 NLRB 645, 648-665, n. 10, set aside on other grounds, 274 F.2d 381 (C.A. 5).

and first achieved majority status on April 25. The Company's refusal to bargain, however, was not based on the fact that the Union held only 26 cards on April 18, but rather on an outright rejection of the Union's request without regard to the number of cards held. In the light of this refusal it would have been futile for the Union formally to renew its request after April 25. Cf. N.L.R.B. v. Burton-Dixie Corp., 210 F.2d 199, 200, 201 (C.A. 10), where the union lacked a majority at the time it requested recognition, but where the request was understood to be of a continuing character. In Burton-Dixie, as here, the employer's attitude made it quite clear that a later request would have been futile, and the court's holding there that the Board properly found a refusal to bargain suggests the propriety of a similar holding here. See also Scobell Chemical Co. v. N.L.R.B., 267 F.2d 922, 925 (C.A. 2), where the court, assuming that the union lacked a majority at the time of its bargaining request, found that it had such a majority the next day, and held that in the light of the strike and picketing which there ensued, the union's request for bargaining must be deemed a continuing request. The instant case is like Scobell except that here, instead of striking and picketing, the Union pursued its bargaining request through a petition for certification, until the Company's unfair labor practices rendered the election route impassable. Surely the Union here should not be in a worse position than the union in Scobell for having followed peaceful procedures in pressing its continuing demand. I find, therefore, that the Company's refusal to recognize the Union after April 25 violated Section 8(a)(5) and (1) of the Act.

Even if the absence of a formal request after April 25 were fatal to the claim of refusal to bargain, moreover, an affirmative bargaining order would be appropriate to remedy the violations found above, and to restore the status quo ante. See Greystone Knitwear Corp., 136 NLRB 573, 575-576, enforced 311 F.2d 794 (C.A. 2), and see also the decisions of the First, Third, Fifth, and Eighth Circuits cited in Greystone, 136 NLRB at 576, n. 4.

C. The alleged discriminatory discharge

1. Sylvester Vaughn

Vaughn testified that he worked for the Company as a truckdriver from October 1960 until he quit on August 7, 1963. He signed a union card in the spring of 1963, and at that time also obtained the signatures of other employees on such cards. According to Vaughn, in July 1963 after his conversations with Herbert Byer, described above, he was no longer permitted to engage in yard work for the Company on Saturdays, as had been his custom prior thereto. (On cross-examination Vaughn admitted that on only one occasion in July was he told not to come in on Saturday, and thereafter he did not report on Saturdays because he was not specifically directed to do so). He further testified that on several occasions in July 1963 he was told to clock out early in the afternoon, whereas prior to that time he had been permitted to do yard work until 5 p.m. if he had no driving assignment. Finally, according to Vaughn, on August 6, Herbert Byer ordered him out of the restroom at 4 p.m., stating that Vaughn should not use those facilities on his employer's time, and on August 7 he was told to clock out at 2 p.m.

These harassments, according to Vaughn, were the last straws, so he did not return to work on Thursday, August 8, but instead looked for another job.

From the foregoing testimony, as well as from Vaughn's earlier conversations with Herbert Byer, recounted above, General Counsel asserts that Vaughn was "constructively discharged," and more particularly that the Company harassed him because of his union activity until his working conditions became intolerable. But the records introduced by the Company show that Vaughn worked overtime in every week in July except that in which the July 4 holiday fell, that he applied for a job at another company on August 5, before the "critical events" of August 6 and 7, and that on the morning of August 8 he went to work for his new employer who paid him \$2.86 per hour instead of the \$1.25 paid by the Company. In the light of these facts, as well as the fact that Vaughn

testified falsely in stating that he had not applied for work elsewhere before August 8 and had not worked on August 8 and 9, I find that the claim of constructive discharge in his case is not supported by the record, and the complaint as to him should be dismissed.

## 2. Robert Baker

Baker had worked for the Company from 1945 to 1956, except for a 17-month absence in 1952-1954, and resumed his employment there in March 1963. He was discharged July 24, 1963, under circumstances described below. He had 16 years' experience as a burner or torch operator, and his job at the time of his discharge involved the use of a gas burner or torch. Baker's conversations with Herbert Byer concerning the Union have been summarized above.

On July 23, after working hours, Baker drove a number of fellow employees to a restaurant some 30 blocks from the plant. At this restaurant he discussed the Union with the group in the booth in which he was sitting. As he left the restaurant, he met Union Representative Felder, and at the latter's suggestion signed a union card. The next morning when Baker arrived at work, Herbert Byer discharged him for an alleged failure to shut off the gas valves when he left work the night before.

Baker stoutly maintained, both at the time and again on the witness stand, that he had shut off the gas before leaving work that night. Contrary testimony was introduced by the Company. All witnesses on the point, including Baker, agreed that failure to turn off the gas involved a risk of explosion. I was very favorably impressed by Baker's demeanor as a witness, but cannot discount entirely the possibility that he simply made a mistake. Whether Baker's mistake — if such it was — should have been penalized by discharge, especially in the light of his long years of service, is not for me to judge. For, on this record, notwithstanding the fact that he had signed a union card the night before, there is not a scintilla of evidence that the Company knew of his action. To be sure, Herbert Byer had earlier intimated that he thought Baker was in the Union, and



Byer had also stated that he knew who had signed union cards, but the Company did not discharge outright any other union members. On the entire record, while my sympathies are with Baker because of his forthright manner and because of his long service, I cannot find that the Company had knowledge of his union activity or that his discharge on July 24 was related thereto. I must therefore recommend dismissal of the complaint as to him.

### 3. John Greer

Greer at the time of the events in question had been in the Company's employ for approximately 15 years except for brief interruptions. For most of this time he had been a truckdriver, and in the years immediately preceding the advent of the Union, his primary occupation had been over-the-road hauling from such cities as Louisville and New Albany to Cincinnati. Greer became the chief union protagonist among the employees; of the 30-signed union cards offered in evidence in addition to Greer's own, he had obtained the signatures on 17.

Greer's conversations with Herbert Byer, described above, establish that Byer knew of Greer's union activity, and that Byer, among other threats, said to Greer, "I'm going to make it so damn hard for you until you quit." General Counsel alleges that the Company sought to implement this threat in the summer of 1963 by transferring Greer from his over-the-road hauling to the disagreeable job of hauling tin cans from local dumps, a task which involved picking up, dumping, and frequently raking filthy, vermin-infested cans. The Company admits that Greer received more "can dump" assignments in the summer of 1963, but attributes this to the departure from its employ of one Jenkins, and to the fact that only some of its drivers, Greer among them, were capable of operating the type of truck used to haul and unload cans.

Greer's testimony that prior to the summer of 1963 he rarely went on dump trips, about once a month, is generally substantiated by company records as read into the transcript by Herbert Byer. In March for example, Greer made three such trips in the second week, but thereafter he had



only one such trip in April, and one in each of 3 weeks in May. In the 14 weeks beginning in March, there were 9 in which he made no such trips, including one stretch of 8 weeks which found him on such a trip only once. But beginning in June the number of such assignments increased, until it reached 11 in August and 7 for the first 18 days of September. The same records, however, would seem to indicate that Greer exaggerated the decline in his nondump hauling, for they show that in August, Greer made 58 other trips, far more than in any other month. On the other hand Greer's time record does not show any appreciable variance in hours worked during the spring and summer, and we are left to conjecture as to how Greer could make 23 trips in April, 38 in May, and 69 in August.

On the whole, although the matter is shrouded in some mystery, I find that General Counsel sustained his burden of proof with respect to Greer. Roughly speaking, in the last 15 weeks of Greer's employment (he quit September 18 under circumstances described below), he had by the Company's admission nearly 30 dump trips, as contrasted with 7 during the preceding similar period. This shift in work (which began well before the departure of Jenkins),<sup>8/</sup> coupled with Byer's threat to make it hard on Greer, warrants the inference that the Company discriminated against this employee, notwithstanding his long service with the Company, by assigning him undesirable work because of his union activity, thereby violating Section 8(a)(3) and (1) of the Act.

On the afternoon of September 18, Greer, at the direction of Herbert Byer, took the truck he was driving to the company garage for a welding repair on a panel. According to Greer's testimony, he and the welder were standing in the "box" on the truck just behind the driver's cab, with Greer facing the front and holding up the panel as the welder directed, when Byer entered the truck from the rear, struck Greer a severe blow on the back of his upraised right arm, and said,

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<sup>8/</sup> Jenkins was replaced by a white truckdriver; Greer is a Negro. There is no intimation of racial discrimination, however.

"I hope I didn't interrupt your damn conversation." Greer, according to his testimony, thereupon followed Byer into the office and remonstrated with Byer for having struck him, to which Byer replied, "I'm not going to fire you, but if you're going to leave, don't come back." Greer punched out at 2:17 p.m., went to a doctor who treated him for the bruise on his arm, and quit his job.

The welder, Hibbard, and Byer presented versions of the episode which differed from Greer's. Hibbard's testimony I reject in its totality, as he impressed me as testifying with little if any regard for the truth. In addition to the poor impression he made on me through his general demeanor, his testimony as to whether he agreed with Greer that Byer had hit Greer is confused and equivocal (see Tr. 386-388), and his testimony that Byer did not appear irritated at the time is contrary to Byer's own testimony that his irritation was apparent.

Byer's version of the episode is that some 10 or 15 minutes after he told Greer to take the job to the welder, he found the two men on the truck engaged in conversation, and this irritated him so that he "apologized" for interrupting their conversation as he wanted to get the truck back on the road. Some 15 or 20 minutes later, according to Byer, Greer came to the office, accused Byer of hitting him, and walked out. Byer testified that he caught up to Greer on the street and told him that if he left he was out of a job. Byer also testified that he had sustained a severe injury to the middle finger of his right hand shortly before the episode in question, a circumstance which would have prevented his using the flat of his hand to strike Greer, but would not have prevented use of the edge of the hand or the fist.

On the record as a whole, and with due regard for the demeanor of the witnesses, and the corroboration each produced (e.g., Byer's hand injury and Greer's doctor's statement), I credit Greer's version and find that Byer struck him in a fit of irritation over the fact that Greer appeared to be conversing with the welder.

In the light of the entire record, including Byer's hostility to the Union and to Greer as its leader, I deem it a fair inference that Byer

when he struck Greer on that occasion was motivated, at least in part, by resentment over Greer's union activity (which Byer may well have thought was the subject of the "damn conversation" he was "interrupting"). As the discriminatory treatment he was receiving, culminating in the blow on his arm, was the cause of Greer's quitting, I find that he was "constructively discharged" as a result of his union activity, and that this "constructive discharge" violated Section 8(a)(3) and (1) of the Act. See, e.g., Polynesian Arts, 100 NLRB 542, 553, enforced as to the employee in question, 209 F.2d 846, 848 (C.A. 6); N.L.R.B. v. Saxe-Glassman Shoe Corp., 201 F.2d 238, 242-243 (C.A. 1), and the cases there cited.

#### Conclusions of Law

1. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, as found above, the Company engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By constructively discharging John Greer because of his union activity, as found above, Respondent engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

3. By refusing to bargain with the Union on and after April 21, 1963, the Company engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### The Remedy

The unfair labor practices in this case call for the conventional cease and desist remedy, with a broad order in the light of the nature of the violations and the general hostility to employee rights revealed in the threats and other unlawful actions detailed above. Affirmatively, I shall recommend that the Company bargain with the Union upon request (a remedy I would prescribe, as noted above, to remedy the violations of Section 8(a)(1) even if no unlawful refusal to bargain had

occurred), and that it reinstate Greer as an over-the-road driver, with backpay in accordance with the formulae set forth in F. W. Woolworth Co., 90 NLRB 289, and Isis Plumbing & Heating Co., 138 NLRB 716. For reasons I have elaborated in Melrose Processing Co., Case No. 18-CA-1661, I am including the "armed forces" provision in my recommended order rather than in the notice which I am recommending.

On the foregoing findings of fact and conclusions of law, and on the record as a whole, I recommend, pursuant to Section 10(c) of the Act, issuance of the following:

### ORDER

Respondent, American Compressed Steel Corporation, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening or interrogating employees with respect to their membership in, or activities on behalf of, any labor organization.

(b) Discriminating against any employee because of membership in, or activity on behalf of, any labor organization.

(c) Refusing to bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the representative of Respondent's employees in the following unit:

All production and maintenance employees employed by the Respondent at its place of business in Cincinnati, Ohio, including truck drivers, but excluding the weigher, the cashier, part-time employees, watchman, office clerical employees and all guards, professional employees and supervisors as defined in the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, bargain collectively with the above-named labor organization as the statutory bargaining representative of the employees in the above-described unit.

(b) Offer to reinstate John Greer to his former position as a truckdriver engaged primarily in over-the-road trucking, and make him



whole in the manner described in the portion of the Trial Examiner's Decision entitled "The Remedy" for any loss of earnings suffered by reason of the discrimination against him.

(c) Notify John Greer if he is serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(d) Preserve, and make available to the Board or its agents upon request, for examination, and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms hereof.

(e) Post at its yard at Cincinnati, Ohio, copies of the notice attached hereto and marked Appendix. <sup>9/</sup> Copies of such notice to be furnished by the Regional Director for the Ninth Region, shall, after being duly signed by an authorized representative of the Respondent, be posted immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director for the Ninth Region, in writing, within 20 days from the date of the receipt of this Decision what steps the Respondent has taken to comply herewith. <sup>10/</sup>

Dated at Washington, D. C.

/s/ Frederick U. Reel  
Trial Examiner

---

<sup>9/</sup> In the event that this Order is adopted by the Board, the words "AS ORDERED BY" shall be substituted for "AS RECOMMENDED BY A TRIAL EXAMINER OF" in the notice. In the further event that the Board's Order be enforced by a United States Court of Appeals the words "A DECREE OF A UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF" shall be inserted immediately following "AS ORDERED BY."

<sup>10/</sup> In the event that this Order is adopted by the Board, this provision shall be modified to read, "Notify said Regional Director, in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."



## APPENDIX

## NOTICE TO ALL EMPLOYEES

AS RECOMMENDED BY A TRIAL EXAMINER OF  
THE NATIONAL LABOR RELATIONS BOARD

We are posting this notice to inform our employees of the rights guaranteed them in the National Labor Relations Act:

WE WILL BARGAIN with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA as the representative of our employees.

WE WILL OFFER John Greer his former job as an over-the-road driver, and pay him for wages he lost since September 18, 1963.

ALL OUR EMPLOYEES have the right to join or assist a union. WE WILL NOT question them as to whether they support a union or threaten them for doing so or take any action against them for doing so.

AMERICAN COMPRESSED STEEL CORPORATION  
(Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_  
(Representative) (Title)

---

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Transit Building, Fourth and Vine Streets, Cincinnati, Ohio 45202 (Tel. No. 381-1420), if they have any questions concerning this notice or compliance with its provisions.

---

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
NINTH REGION

In the Matter of: )

AMERICAN COMPRESSED )  
STEEL CORPORATION )

and )

INTERNATIONAL BROTHERHOOD )  
OF TEAMSTERS, CHAUFFEURS, )  
WAREHOUSEMEN AND HELPERS )  
OF AMERICA )

Case No. 9-CA-2932

and )

LOCAL 152, INTERNATIONAL )  
BROTHERHOOD OF TEAMSTERS, )  
CHAUFFEURS, WAREHOUSEMEN )  
AND HELPERS OF AMERICA )

Case No. 9-CA-2968

GENERAL COUNSEL'S LIMITED EXCEPTIONS  
TO THE TRIAL EXAMINER'S DECISION

Counsel for the General Counsel respectfully excepts, in the manner set forth below, to the Trial Examiner's Decision and Recommended Order issues in the above-entitled cases by Frederick U. Reel, Trial Examiner, on January 6, 1964.

1. To the failure of the Trial Examiner to find, as alleged in Allegation 6 of the Complaint, that the Respondent discharged its employee, Robert Baker, because of his sympathy for and activity on behalf of the Union. (TXD 8, L 11-15)<sup>1/</sup>

2. To the failure of the Trial Examiner to recommend to the Board a NOTICE TO ALL EMPLOYEES consistent with the Trial Examiner's Recommended Order, and which is usual in this type of case.

3. To the Trial Examiner's Conclusions of Law that Respondent refused to bargain with the Union on and after April 21, 1963 (TXD 10, L 13-14) after having concluded that Respondent refused to bargain with the Union on and after April 25, 1963 (TXD 6, L 42-43).

<sup>1/</sup> References to the Trial Examiner's Decision will be designated as (TXD \_\_\_\_).

4. To all findings, conclusions and recommendations inconsistent with the above exceptions.

Respectfully submitted this 12th day of February, 1964.

/s/ Jack V. Baker  
Counsel for the General Counsel  
Ninth Region, National Labor  
Relations Board

\* \* \*

146 NLRB No. 172

D-6034  
Cincinnati, Ohio

### DECISION AND ORDER

On January 6, 1964, Trial Examiner Frederick U. Reel issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Trial Examiner's Decision attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices, and recommended that the allegations of the complaint pertaining thereto be dismissed. Thereafter, the General Counsel and the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel.

The board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings

are hereby affirmed.<sup>1/</sup> The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in these cases, and hereby adopts the findings, conclusions,<sup>2/</sup> and recommendations of the Trial Examiner.

---

<sup>1/</sup> During the course of the hearing, Respondent moved that the Trial Examiner either hold the hearing open or grant a continuance in order to allow it time to examine the authenticity of the membership cards submitted in support of the Union's majority claim. The Trial Examiner declined to grant either request, but did instruct Respondent that he would, at any time before the issuance of his decision, entertain a motion to reopen the record to take evidence as to authenticity, if Respondent stated with particularity sufficient cause to warrant such action. He noted particularly that, if a motion were made to reopen the hearing for the purpose of challenging the handwriting on the cards - Respondent was given copies of the cards introduced into evidence for the purpose of having them examined by a handwriting expert - he would in all probability grant the motion. He declined, however, to commit himself in advance of the event as to his ruling on any motion that might be filed challenging authenticity of the cards on other grounds. Respondent's counsel did not object on the record, or in his exceptions, to the Trial Examiner's decision as to the period of time given to prepare his defenses on this issue, although he did object to the Trial Examiner's refusal to commit himself to reopening the record if the cards were timely challenged on grounds other than an attack on the handwriting.

Although 54 days passed from close of hearing to issuance of the Trial Examiner's Decision on January 6, Respondent filed no such motion with the Trial Examiner. A motion to reopen was filed with the Board on January 31, 1964, stating simply that "Respondent is prepared to submit testimony that three cards . . . are not genuine and that the signature of one additional card so offered was affixed thereon on April 28, 1963, rather than April 20, 1963, the date indicated on the cards."

We have carefully considered the circumstances which have given rise to the motion, including the Trial Examiner's rulings as to the manner and time available to Respondent to adequately present its case on the validity of the cards. We believe those rulings were eminently fair and reasonable, and afforded Respondent ample opportunity to prepare and present its case. Respondent took no specific exception thereto either at the hearing, in its exceptions to the Trial Examiner's Decision, or in its motion to the Board. Further, its motion neither states with particularity the nature of the evidence supporting its challenge to the authenticity of the cards, nor sets forth the reasons why it did not file a motion with the Trial Examiner within the time limits allowed. For all the foregoing reasons we deny the motion.

<sup>2/</sup> The Trial Examiner in his conclusions of law states that Respondent refused to bargain "on or after April 21, 1963" ("Conclusions of Law," paragraph 3 of his Decision). This was apparently an inadvertent error, and is hereby corrected to read April 25, 1963, in conformity with his findings in the second paragraph, part B, 3 of his Decision.



Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the Board hereby adopts as its Order, the Order recommended by the Trial Examiner, and in conformity with his findings, his Order is hereby amended by:

(1) Substituting for paragraphs 1(a) and (b), the following:

(a) Threatening or unlawfully interrogating employees with respect to their membership in, or activities on behalf of, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

(b) Discriminating against any employee because of membership in, or activity on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

(2) Adding to paragraph 1 the following:

(c) Requesting employees to influence other employees to drop out of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization.

(d) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed under Section 7 of the Act.

(3) Changing the designation of paragraph (c) to (e).

(4) Adding to paragraph 2(a) the following: "and embody in a signed agreement any understanding reached."

(5) Substituting the "Appendix" attached hereto for the Trial Examiner's Recommended Notice.

Dated, Washington, D. C.

/s/ Frank W. McCulloch  
Chairman

/s/ John H. Fanning  
Member

/s/ Howard Jenkins, Jr.  
Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD



APPENDIX  
NOTICE TO ALL EMPLOYEES  
PURSUANT TO  
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL, upon request, bargain collectively with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA as the representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such an understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees at our place of business in Cincinnati, Ohio, including truck drivers, but excluding the weigher, the cashier, part-time employees, watchmen, office clerical employees, and all guards, professional employees, and supervisors as defined in the Act.

WE WILL OFFER John Greer his former job as an over-the-road driver, and pay him for wages he lost since September 18, 1963.

WE WILL NOT ask employees to influence other employees to drop out of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization.

WE WILL NOT threaten or interrogate our employees with respect to their membership in, or activities on behalf of, the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization.

WE WILL NOT discriminate against any employee because of membership in, or activity on behalf of, the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed under Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

All our employees are free to become or remain, or to refrain from becoming or remaining, members in good standing of said INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization.

AMERICAN COMPRESSED STEEL CORPORATION  
(Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_  
(Representative) (title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, Room 2023, Federal Office Bldg., 550 Main St., Cincinnati, Ohio, 45202 (Tel. No. 381-2200), if they have any questions concerning this notice or compliance with its provisions.

1. Petitioner is a local labor organization and a voluntary, unincorporated association, chartered to organize and represent employees in collective bargaining.

2. In the final Decision and Order, hereinabove referred to, the Board concluded that American Compressed Steel Corp., respondent below, (hereinafter referred to as "Compressed Steel") had committed certain unfair labor practices in violation of Sections 8(a)(1), (3) and (5) of the Labor-Management Relations Act, as amended. The Board ordered that the complaint which had been issued by the General Counsel of the National Labor Relations Board against respondent be dismissed in part.

3. This Court, in the foregoing circumstances, has jurisdiction of this action and the parties hereto under the provisions of Section 10(f) of the Labor-Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U.S.C., Sec. 151, et seq., hereinafter called "the Act."

**NATURE OF THE PROCEEDINGS AS TO  
WHICH REVIEW IS SOUGHT**

---

4. The nature of the proceedings as to which review is sought is as follows:

Upon an original charge filed by petitioner against Compressed Steel, the General Counsel of the Board issued a complaint alleging that Compressed Steel had engaged in certain unfair labor practices in violation of Sections 8(a)(1), (3) and (5) of the Act.

The complaint alleged in substance that Compressed Steel (1) had threatened to close its plant if the union came in, to fire union adherents and to make conditions so difficult they would quit and had interrogated employees in violation of Section 8(a)(1) of the Act; (2) had violated Section 8(a)(3) of the Act by assigning undesirable work to a union adherent and by discharging employees for union activities; and (3) had refused to bargain in good faith with the union in violation of Section 8(a)(5) of the Act.

Pursuant to notice a hearing was held before the Honorable Frederick U. Reel, Trial Examiner, at Cincinnati, Ohio, on November 12-14, 1963. On January 6, 1964, Trial Examiner Reel issued his Intermediate Report finding that respondent had engaged in certain unfair labor practices but had not engaged in certain other unfair labor practices.



Thereafter, Compressed Steel, the General Counsel and petitioner filed Exceptions to the Intermediate Report and Briefs in support of their Exceptions.

On May 8, 1964, the Board issued its Decision and Order, finding that Compressed Steel had engaged in conduct violative of the Act but ordering that the complaint be dismissed with respect to certain other allegations of unfair labor practices contained in the complaint.

#### GROUND ON WHICH RELIEF IS SOUGHT

The petitioner respectfully submits and contends that the Board erred to the extent that it found that Compressed Steel did not engage in conduct in violation of Sections 8(a)(3) and (1) of the Act as alleged in the Complaint and that the Order of the Board is to that extent unsupported by substantial evidence on the record considered as a whole, and is contrary to law.

#### THE RELIEF PRAYED

In view of the foregoing, the petitioner prays:

(1) That a certified copy hereof be forthwith served according to law upon the respondent, National Labor Relations Board, and that the respondent, National Labor Relations Board, be required in conformity with the law to certify to the Court a transcript of the record of proceedings wherein said Order was entered, including the pleadings, record, and the Decision and Order of the National Labor Relations Board.

(2) That said proceedings, findings, conclusions and Decision and Order be set aside, vacated and annulled to the extent that the Board found Compressed Steel not guilty of violations of the Act which had been alleged in the complaint and that this case be remanded to the Board for the issuance of a Decision and Order in accordance with the decision of this Court.

(3) That this Court exercise its jurisdiction and grant petitioner such other and further relief in the premises as the rights and equities



of the cause may require and to the Court may seem just and proper.

Respectfully submitted,

/s/ David Previant

\* \* \*

/s/ Herbert S. Thatcher

\* \* \*

/s/ Robert A. Wilson

\* \* \*

Counsel for Petitioner

---

Law Offices  
HERBERT S. THATCHER  
1009 Tower Building  
Washington 5, D. C.  
September 1, 1964

\* \* \*

\* \* \*

Mr. Nathan J. Paulson, Clerk  
United States Court of Appeals for the  
District of Columbia  
Constitution Avenue & John Marshall Place  
Washington, D. C.

Re: Local No. 152, IBT v. N.L.R.B. Case No. 18682  
N.L.R.B. v. American Compressed Steel Corporation  
Case No. 18,734

Dear Mr. Paulson:

With respect to the Petition to Review and Set Aside an Order of the National Labor Relations Board which I, as counsel for Petitioner, filed with the Court on June 8, 1964, I wish to point out an inadvertent error which was made on Page 3 thereof. In the fourth full paragraph on that page in the second line of said paragraph the words "and petitioner" should be deleted. I would appreciate it if you made the correction physically on the copies of the Petition filed with the Court.

I certify to you that I have sent a copy of this letter to counsel for the National Labor Relations Board and the Respondent on this same date.

Thank you for your cooperation in this regard.

Very truly yours,

/s/ Herbert S. Thatcher  
Counsel for Petitioner

\* \* \*

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LOCAL NO. 152, affiliated with the ) INTERNATIONAL BROTHERHOOD ) OF TEAMSTERS, CHAUFFEURS, ) WAREHOUSEMEN AND HELPERS ) OF AMERICA, ) <div style="text-align: right;">Petitioner, )</div>	)	
v. )	)	No. 18,682
NATIONAL LABOR RELATIONS ) BOARD, ) <div style="text-align: right;">Respondent. )</div>	)	
* * * * *		
NATIONAL LABOR RELATIONS ) BOARD, ) <div style="text-align: right;">Petitioner, )</div>	)	
v. )	)	No. 18,734
AMERICAN COMPRESSED STEEL ) CORPORATION, ) <div style="text-align: right;">Respondent. )</div>	)	

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Court, the parties hereby stipulate and agree as follows, subject to the approval of the Court, with respect to the issues, the method of designating the contents of the joint appendix, and the dates for the filing of the briefs and joint appendix.

I. STATEMENT OF THE ISSUES

The Union, the Company, and the Board agree that the following issues are presented:

1. Whether the Board properly dismissed that portion of the Complaint alleging that the Company violated Section 8(a)(1) and (3) of the Act, by constructively and/or in fact discharging employees Vaughn and Baker.

2. Whether the Board properly found that the Company violated Section 8(a)(1) and (3) of the Act by constructively discharging employee Greer.

3. Whether the Board properly found that the Company violated Section 8(a)(1) of the Act by threatening and interrogating employees concerning their Union activity.

4. Whether the Board properly found that the Company violated Section 8(a)(5) of the Act by refusing to bargain with the Union.

## II. THE BRIEFS AND JOINT APPENDIX TO THE BRIEFS

1. The joint appendix shall consist of such portions of the record in Case Nos. 9-CA-2932 and 2968 as the parties hereto shall respectively designate. Petitioner's designation shall include the Board's Decision and Order, the Trial Examiner's Intermediate Report, this stipulation, and the order entered by the Court approving this stipulation. Petitioner will serve its designation upon the other parties by September 15th, 1964, the Board will serve its designation by September 22nd, 1964, and the Company will serve its designation by September 29th, 1964. The Board will be responsible for the printing of the joint appendix, and will file and serve it on or before November 3, 1964, provided that the designations are received on or before the dates set out above. Each party will pay its respective share of the joint appendix printing costs, each share to be determined by the length of the party's designation. Fifty copies of the joint appendix shall be printed under this stipulation, the required number of copies will be filed with the Court, and the remaining copies will be divided equally among the parties.

2. Any party and the Court, at or following the hearing in the case, may refer to any portion of the original transcript of record or exhibits herein which has not been printed or otherwise reproduced, it being understood that any portions of the record thus referred to will be printed in a supplemental joint appendix, if the Court so directs.

3. Petitioner will file and serve its opening brief on or before September 14, 1964, the Board will file and serve its brief on or

before October 9, 1964, and the Company will file and serve its brief on or before November 3, 1964. If the Board or the Union wishes to file a reply brief, it shall do so on or before November 18, 1964. In lieu of filing and serving printed briefs on the designated briefs, any party may file and serve a typewritten copy of its brief on the date due and file and serve a printed brief within ten days thereafter.

Dated at Washington, D. C.  
July 10, 1964

/s/ Marcel Mallet-Prevost  
Marcel Mallet-Prevost  
Assistant General Counsel  
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.  
July 13, 1964

/s/ Herbert S. Thatcher  
Counsel for Union

Dated at Cincinnati, Ohio  
July 16, 1964

/s/ Philip J. Kennedy  
Counsel for Company

---

Before: Bazelon, Chief Judge,  
in Chambers.

#### PREHEARING ORDER

The parties in the above-entitled cases having submitted their stipulation pursuant to Rule 38(k) of this court, and the stipulation having been considered, the stipulation is approved except as hereinafter provided, and it is

ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of the court, and the stipulation of the parties shall be printed in the joint appendix herein, and it is

FURTHER ORDERED that the times for filing the briefs and joint appendix of the parties shall be governed by Rule 18 of the General Rules of this court.

Any extension of time for filing the briefs of the parties may be granted only on motion for good cause shown.

Dated: July 24, 1964

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BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD

---

United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,682

LOCAL 152, INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELP-  
ERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 18,734

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

AMERICAN COMPRESSED STEEL CORPORATION,  
RESPONDENT

On Petition to Review and on Cross-Petition for  
Enforcement of an Order of the National  
Labor Relations Board

ARNOLD ORDMAN,  
*General Counsel,*

DOMINICK L. MANOLI,  
*Associate General Counsel,*

MARCEL MALLET-PREVOST,  
*Assistant General Counsel,*

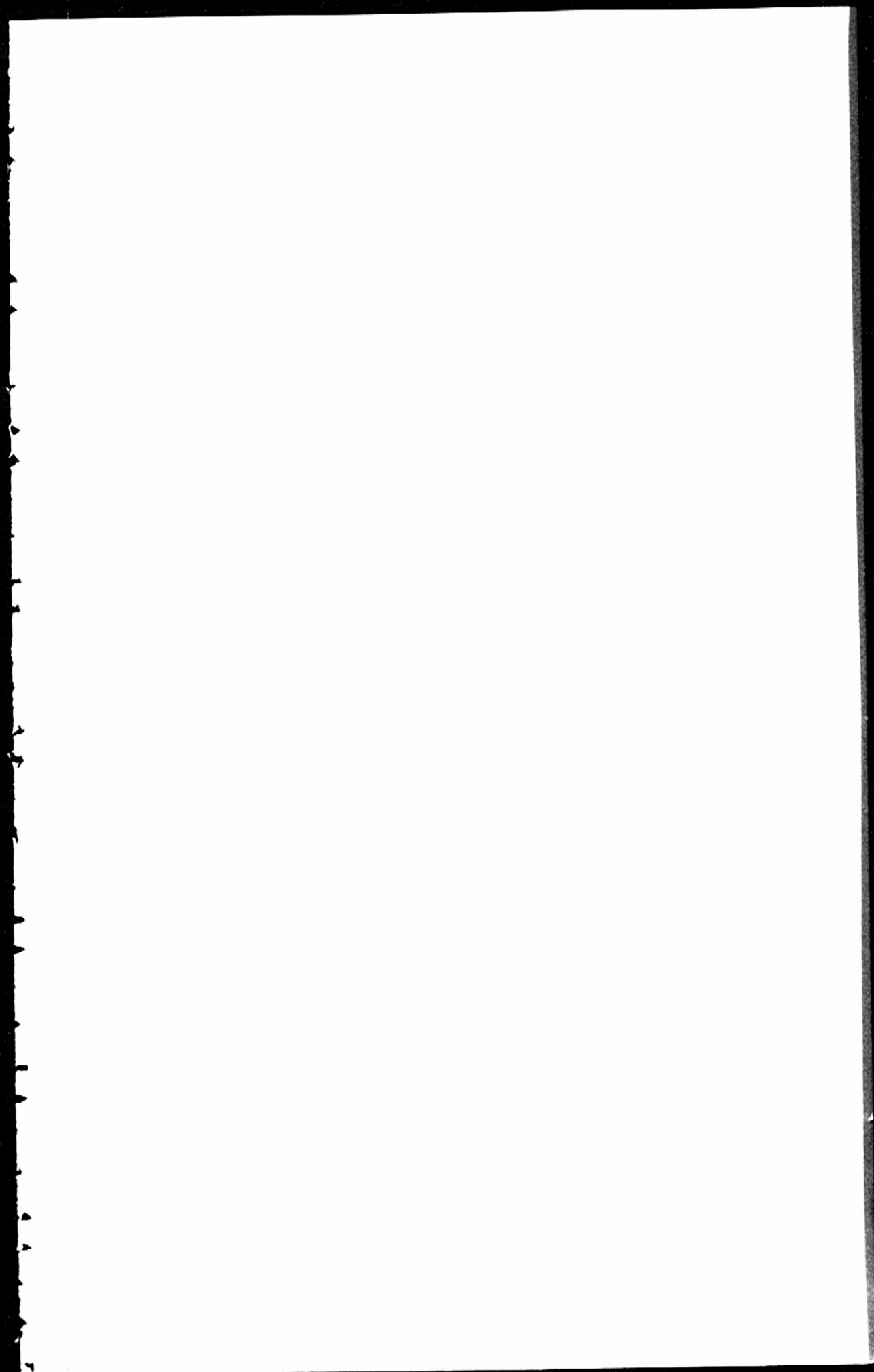
STEPHEN B. GOLDBERG,  
GEORGE B. DRIESEN,  
*Attorneys,*

*National Labor Relations Board.*

United States Court of Appeals  
for the District of Columbia Circuit

FILED NOV 2 1964

*Nathan J. Paulson*  
CLERK



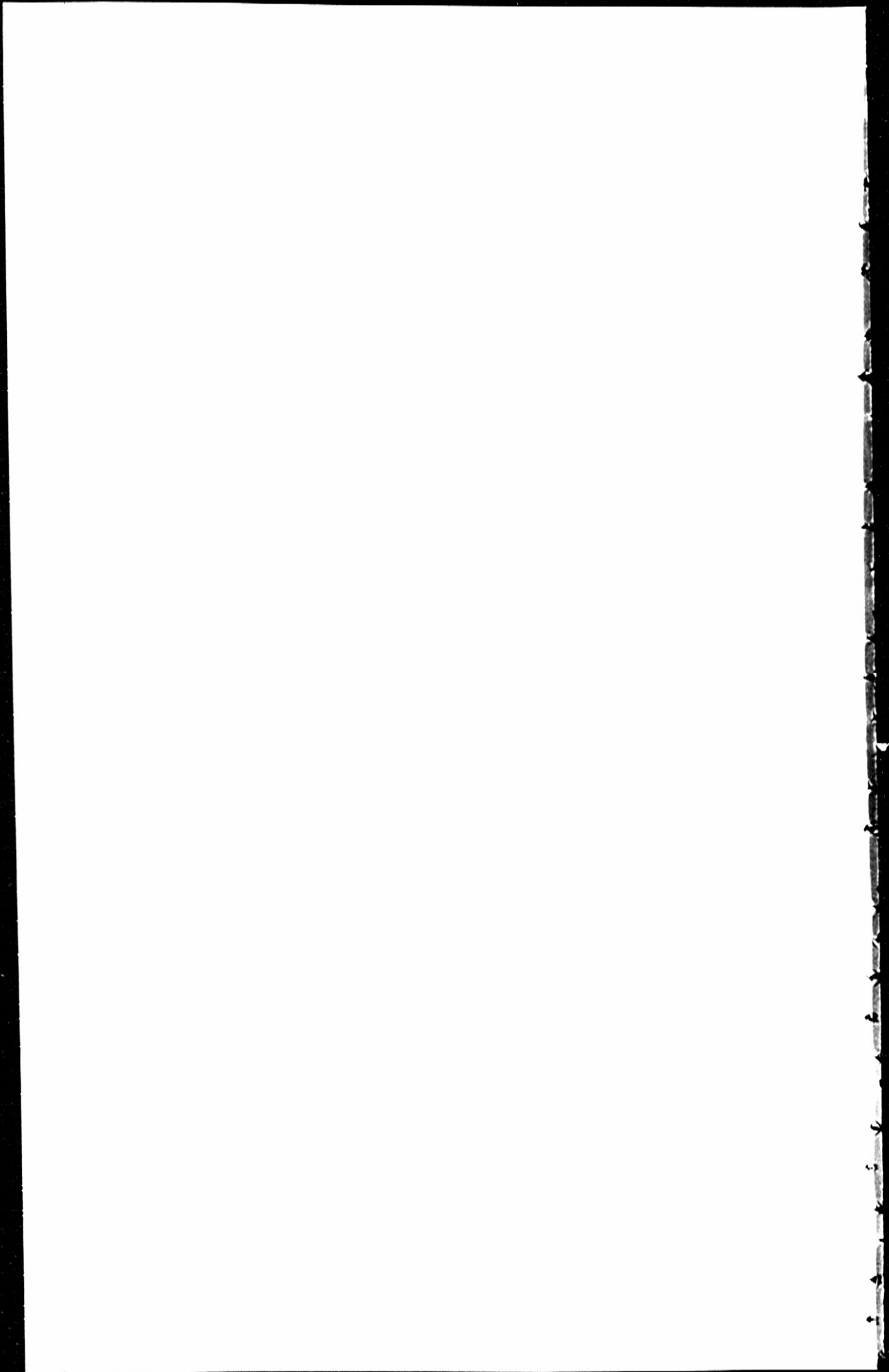
## STATEMENT OF QUESTIONS PRESENTED

I. Whether substantial evidence supports the Board's finding that the Company violated Section 8(a)(1) of the Act.

II. Whether substantial evidence supports the Board's finding that the Company violated Section 8(a)(3) of the Act by constructively discharging employee John Greer.

III. Whether the Board properly found that respondent refused to bargain in violation of Section 8(a)(5) of the Act.

IV. Whether the Board properly dismissed that portion of the complaint alleging that the discharge of Robert Baker violated Section 8(a)(3) of the Act.



### III

## INDEX

	Page
Statement of questions presented.....	I
Jurisdictional statement.....	(1)
Counterstatement of the case.....	2
I. The Board's findings of fact.....	2
A. The Union begins its organizational drive; the Company threatens and interrogates union adherents.....	3
B. The Company refuses to recognize the Union.....	4
C. The Company continues to threaten and interrogate employees.....	5
D. The Company assigns Greer to undesirable work and constructively discharges him.....	6
E. The Company discharges Baker.....	8
II. The Board's conclusions and order.....	9
Summary of argument.....	10
Argument.....	13
I. Substantial evidence supports the Board's finding that the Company violated Section 8(a) (1) and (3) of the Act.....	13
A. Byer's threats, interrogation, and claims that he knew who supported the Union were unlawful.....	13
B. Greer's constructive discharge violated the Act.....	14
II. The Board properly ordered the Company to bargain with the Union.....	17
A. The Company's failure to bargain with the Union violated Section 8(a) (5) (1) of the Act.....	17



# IV

Argument—Continued	Page
B. In any event, the Board's order that the Company bargain with the Union is a reasonable exercise of the Board's broad remedial powers.....	20
III. Substantial evidence supports the Board's finding that Baker was not discriminatorily discharged.....	22
Conclusion.....	25
Appendix A.....	26

## AUTHORITIES CITED

### Cases:

<i>American Federation of Grain Millers v. N.L.R.B.</i> , 197 F. 2d 451 (C.A. 5).....	19
* <i>Bausch &amp; Lomb Optical Co. v. N.L.R.B.</i> , 217 F. 2d 575 (C.A. 2).....	10, 14
<i>Eastern Die Co.</i> , 142 NLRB 601.....	14
* <i>Editorial "El Imparcial", Inc. v. N.L.R.B.</i> , 278 F. 2d 184 (C.A. 1).....	21
<i>Greenville Cotton Oil Co.</i> , 92 NLRB 1033.....	19
* <i>Greystone Knitwear Corp. v. N.L.R.B.</i> , 311 F. 2d 794 (C.A. 2).....	20-21
* <i>D. H. Holmes Co. v. N.L.R.B.</i> , 179 F. 2d 876 (C.A. 5).....	21, 22
* <i>Joy Silk Mills v. N.L.R.B.</i> , 87 U.S. App. D.C. 360, 185 F. 2d 732 (C.A. D.C.), cert. denied, 341 U.S. 914.....	10, 13, 14, 16, 17, 18
<i>Medo Photo Supply Corp. v. N.L.R.B.</i> , 321 U.S. 678.....	20
* <i>N.L.R.B. v. Burton-Dixie Corp.</i> , 210 F. 2d 199 (C.A. 10).....	12, 18, 20
<i>N.L.R.B. v. Caldarera</i> , 209 F. 2d 265 (C.A. 8).....	21
<i>N.L.R.B. v. Lester Bros., Inc.</i> , 301 F. 2d 62 (C.A. 4).....	13
<i>N.L.R.B. v. Nevada Consolidated Copper Corp.</i> , 316 U.S. 105.....	23
* <i>N.L.R.B. v. Palm Beach Broadcasting Co.</i> , 155 F. 2d 805 (C.A. 5).....	10, 14

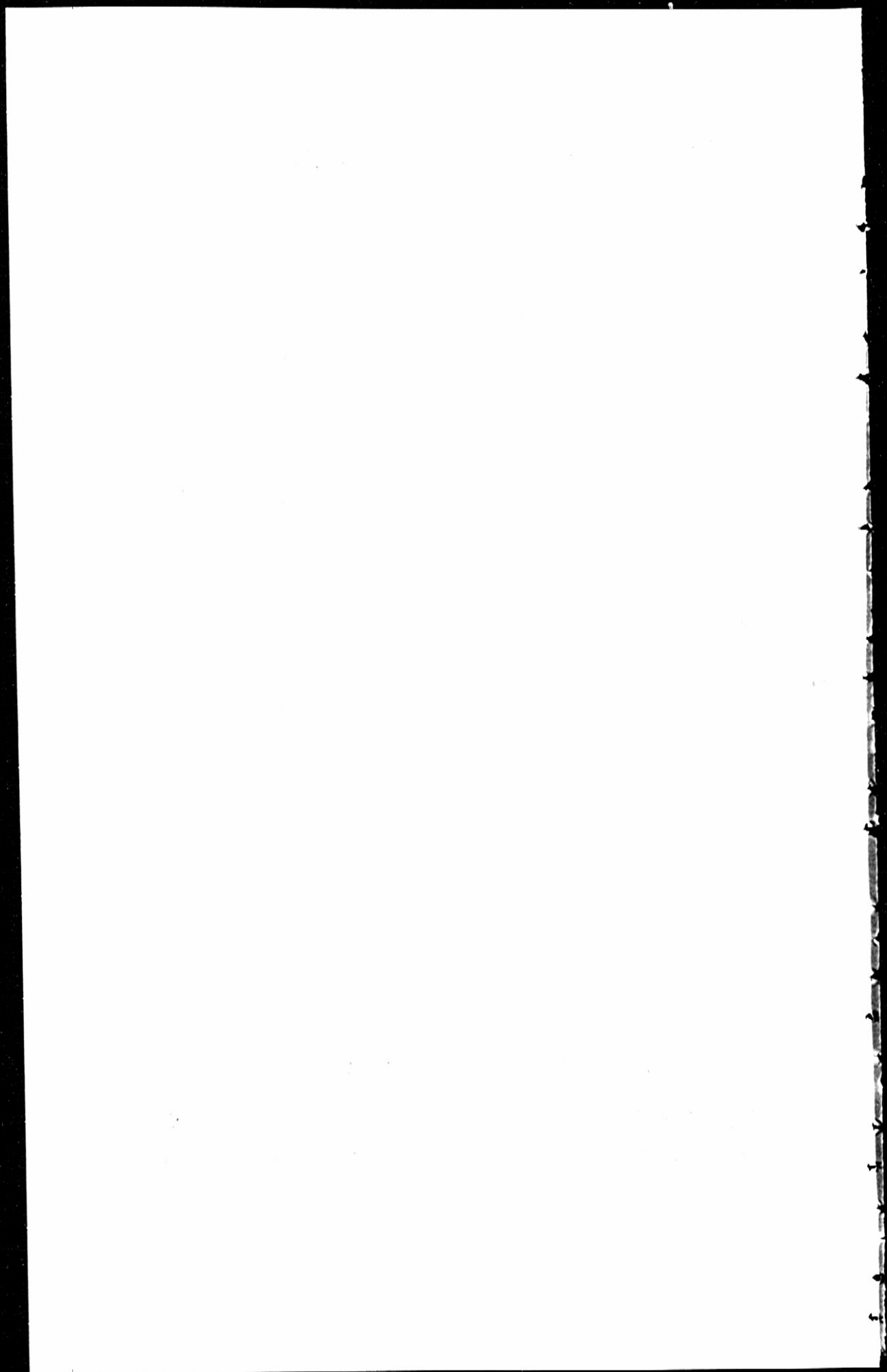
Cases—Continued	Page
<i>N.L.R.B. v. George P. Pilling &amp; Son Co.</i> , 119 F. 2d 32 (C.A. 3).....	13
* <i>N.L.R.B. v. Saxe-Glassman Shoe Corp.</i> , 201 F. 2d 238 (C.A. 1).....	10, 14
<i>N.L.R.B. v. Stow Mfg. Co.</i> , 217 F. 2d 900 (C.A. 2), cert. denied, 348 U.S. 964.....	21, 22
<i>N.L.R.B. v. Superior Fireproof Door &amp; Sash Co.</i> , 289 F. 2d 713 (C.A. 2).....	18
<i>N.L.R.B. v. Trimfit of California</i> , 211 F. 2d 206 (C.A. 9).....	17
* <i>Piasecki Aircraft Corp. v. N.L.R.B.</i> , 280 F. 2d 575 (C.A. 3), cert. denied, 364 U.S. 933.....	21, 22
<i>Radio Officers' Union v. N.L.R.B.</i> , 347 U.S. 17.....	23
* <i>Scobell Chemical Co. v. N.L.R.B.</i> , 267 F. 2d 922 (C.A. 2).....	12, 18, 20
<i>Summit Mining Corp. v. N.L.R.B.</i> , 260 F. 2d 894 (C.A. 3).....	21
<i>Texarkana Bus Co. v. N.L.R.B.</i> , 119 F. 2d 480 (C.A. 8).....	21
<i>United Mine Workers v. Arkansas Oak Flooring Co.</i> , 351 U.S. 62.....	17
* <i>Universal Camera Corp. v. N.L.R.B.</i> , 340 U.S. 474.....	24

### STATUTE

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, <i>et seq.</i> ).....	2
Section 2(11).....	2
Section 7.....	10
Section 8(a)(1).....	3, 13, 17
Section 8(a)(3).....	3, 13
Section 8(a)(5).....	3, 17
Section 10(b).....	19
Section 10(c).....	2
Section 10(e).....	2
Section 10(f).....	2

### Miscellaneous:

Davis, Administrative Law, Sec. 29.05 (1958).....	23
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**United States Court of Appeals**  
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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No. 18,682

LOCAL 152, INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELP-  
ERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

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No. 18,734

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

AMERICAN COMPRESSED STEEL CORPORATION,  
RESPONDENT

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On Petition to Review and on Cross-Petition for  
Enforcement of an Order of the National  
Labor Relations Board

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BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD

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**JURISDICTIONAL STATEMENT**

Case No. 18,682 is before this Court on petition of  
Local 152, International Brotherhood of Teamsters

("the Union") to review and set aside that portion of an order issued by the National Labor Relations Board pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*), which dismissed part of the complaint alleging that American Compressed Steel Corporation ("the Company") had violated Section 8(a)(3) of the Act.<sup>1</sup> In Case No. 18,734, the Board has cross-petitioned for enforcement of those portions of its order wherein the Company was found to have violated Section 8(a)(1), (3), and (5) of the Act.<sup>2</sup> The Board's order (J.A. 105-108) was issued on May 8, 1964, and is reported at 146 NLRB No. 172.<sup>3</sup> This Court has jurisdiction of those proceedings under Section 10(e) and (f) of the Act; the Board's jurisdiction is not contested.

## COUNTERSTATEMENT OF THE CASE

### I. The Board's findings of fact

The Board found that Herbert Byer, son of Company President Abe Byer and a supervisor within the meaning of Section 2(11) of the Act, responded to the Union's organizational campaign by threatening to fire union adherents or to make conditions so diffi-

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<sup>1</sup> The relevant portions of the Act are set out at p. — of the Union's brief and in an appendix to this brief at pages 26-28, *infra*.

<sup>2</sup> This Court consolidated the two cases for all purposes.

<sup>3</sup> "J.A." refers to the portion of the record printed as a joint appendix to the briefs. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.



cult for them that they would quit, by interrogating employees about union activities, and by stating that he knew who the union adherents were. The Board also found that the Company refused to bargain with the Union, and constructively discharged John Greer, a leading union proponent, on account of his union activity. Finally, the Board found that the Company discharged employee Robert Baker because he had failed to shut off gas valves before leaving work, and not on account of his union membership or activities. The facts supporting the Board's findings are these:

***A. The Union begins its organizational drive; the Company threatens and interrogates union adherents***

The Union started to organize the Company's employees in mid-March 1963 (J.A. 86; 8).<sup>4</sup> On April 5, Supervisor Herbert Byer said to employee Sylvester Vaughn: "I heard you was one of those cardholders" (J.A. 89; 58). When Vaughn expressed ignorance as to what Byer was talking about, the latter continued: "I know you signed a card, one of those union cards, because my boys said you had. . . . I just want you to know you're on the loser's side" (J.A. 89; 58). On several occasions later in April, Byer told Vaughn such things as "I never had a union down here; I never will have no union down here; before I will have a union I'll close up first; a union wouldn't do you no good no ways because it would only hurt you and your pay, because whereas you're making 40 hours a week now you wouldn't be if I had a union

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<sup>4</sup> All events discussed herein took place in 1963.

in here, because the way I let you work around in the yard after your truck work is done, I wouldn't" (J.A. 89; 58, 61).

About April 10 or 12, Byer approached Baker, a "burner" in the yard, and asked if he knew anything about the Union. Baker denied any knowledge of the matter, but Byer professed not to believe him. Byer continued, announcing that "he wasn't going to have no union in there, he'd fire everyone he thought was for the Union" (J.A. 87; 55).

*B. The Company refuses to recognize the Union*

By mid-April, a number of employees had signed cards authorizing the Union to bargain for them (J.A. 92; 63-64). On April 18, when the Union had obtained such cards from 26 employees, a majority, so the Union believed, in a unit appropriate for collective bargaining, a Union representative telephoned the Company, spoke to one of the Byers, and requested the Company to recognize the Union (J.A. 92; 5, 6, 62-64). Without expressing any doubt as to the validity of the Union's claim that it represented a majority of the Company's employees, the Byer who had answered the phone replied that he was not interested in talking to the Union and hung up (J.A. 91; 62-64). On the same day, the Union sent a registered letter to the Company repeating its demand. The Company ignored the letter. Four days later, the Union filed a petition for a representation election (J.A. 91; 63). On April 25, the Union obtained its 31st authorization card (J.A. 92).

After a hearing upon the Union's representation petition, the Board's Regional Director issued a Decision and Direction of Election in which he found the appropriate bargaining union included 60 or 61 employees. Thus, the Union did not obtain majority status until April 25, the day it obtained its 31st card.<sup>5</sup>

*C. The Company continues to threaten and interrogate employees*

On April 22, Byer told Greer, a truckdriver and a leading proponent of the Union, that "there wouldn't be a union in there as long as he [Byer] owned the place, and if we got a union in he would close the place up (J.A. 88; 23). Byer expressed disbelief when Greer denied knowledge of the Union, and added that he (Byer) knew every man who had signed a union card. And Byer warned "I can get rid of every one of you just like that and hire new fellows, but I'm not going to fire you, but I'm going to make it so damn hard for you until you quit" (J.A. 88; 23-24).

About April 27 or 28, Byer again approached Baker at work, asked if he had learned any more about the Union, and expressed disbelief at Baker's denial. Byer then asked Baker to talk to the employees and get them "to vote for the union out, they

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<sup>5</sup> No representation election was held because, on August 7 and September 19 the Union filed unfair labor practice charges which the Regional Director subsequently found to have merit (J.A. 93).

wasn't going to get in there; they wasn't going to have no union" (J.A. 87; 52-53).

On July 18, Byer asked Baker to get into Byer's car, and they took a short ride, parking on the river bank. Byer questioned Baker about the number of hours he was working and his gross pay, and then said that if the Union came in, Baker would be making less as his hours would be cut. Byer said "he would fire everybody he thought was for the Union, and then he changed it and said, "'No', he said 'I won't fire them.' He said, 'I'll make it so hard, they'll probably fire themselves'" (J.A. 88; 54-55).

In mid-July, Greer had tire trouble on an inter-city trip in a Company truck. When he returned, Byer said "get the union men to find [you] . . . a damn job." Byer added that Greer had been having trouble whenever he went on a trip and that he (Byer) had "been having trouble with you ever since you fellows started with that Union." Byer shook his finger at Greer and said "You're a big man, John, but it don't mean a damn to me." Late in August, after Vaughn had quit and Baker was discharged, Byer said to Greer "All your boys are leaving you here, John; what you gonna do?" (J.A. 88-89; 25-26).

**D. *The Company assigns Greer to undesirable work and constructively discharges him***

Except for brief interruptions, Greer had been employed by the Company for 15 years prior to the events in question (J.A. 97; 8, 9). Greer became the chief Union protagonist among the employees; of the 30 signed union cards offered in evidence in addition

to Greer's own, he had obtained signatures on 17 (J.A. 97; 17-19).

Greer's principal assignment was over-the-road hauling from such cities as Louisville and New Albany to Cincinnati (J.A. 97; 9, 11-12). Only occasionally was he assigned to the disagreeable job of hauling tin cans from local dumps, a task which involved picking up, dumping and frequently raking filthy, vermin-infested cans (J.A. 97; 9-10, 33). In the 15 weeks preceding June 12, for example, he hauled cans only seven times (J.A. 98; 72-75). Beginning in June, Greer's "can-dump" assignments began to increase, reaching 11 in August and 7 for the first 18 days of September (J.A. 98; 73). In the 15 weeks between June 14 and September 18 (when Greer quit), he was given nearly 30 can-dump assignments (J.A. 98; 73-75).<sup>6</sup>

On the afternoon of September 18, Greer, at the direction of Herbert Byer, took the truck he was driving to the Company garage for a welding repair on a panel (J.A. 98; 29). Greer and the welder were standing in the "box" on the truck just below the driver's cab, with Greer facing the front and holding up the panel as the welder directed, when Byer entered the truck from the rear, struck Greer a severe blow on the back of his upraised arm, and said, "I hope I didn't interrupt your damn conversation" (J.A. 98-99; 12-13). Greer thereupon followed Byer

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<sup>6</sup> Monthly totals were: March, 3; April, 1; May, 3; June 6; July, 6; August, 11; September (3 weeks), 8 (J.A. 72-73). Greer testified that prior to the summer of 1963 he went on dump trips rarely, about once a month (J.A. 98; 33).



into the office and remonstrated with him for having struck him, to which Byer replied, "I'm not going to fire you, but if you're going to leave, don't come back" (J.A. 99; 13). Greer punched out at 2:17 p.m., went to a doctor who treated him for the bruise on his arm, and quit his job (J.A. 99; 13, 84).

#### *E. The Company discharges Baker*

On July 23, just after Baker left his work station to clock out, Company President Abe Byer saw Max Beech, the yard foreman, walk up and start to turn a valve which controlled the flow of acetylene and oxygen to a burner which Baker had been using (J.A. 82-83). Leaving the valve open could cause an explosion and could damage the hose which connected the tanks to the burner, and Baker had been told always to turn the valves off before he left work (J.A. 96; 45, 76-77).

After he clocked out that day, Baker drove a number of fellow employees to a restaurant some 30 blocks from the plant. At this restaurant he discussed the Union with the group in the booth in which he was sitting. As he left, Baker met Union Representative Felder and, at Felder's suggestion, signed a union card. (J.A. 96; 44, 56). There is no evidence that the Company knew that Baker had signed the card (J.A. 96), and Baker testified that he had had no prior contact with the Union (J.A. 56-57).

The next day, Herbert Byer, who had been informed by Beech that Baker had left the gas tank valves open the preceding night, discharged Baker (J.A. 96; 45, 47, 76, 77, 79).

## II. The Board's conclusions and order

On these facts, the Board found that Byer had threatened to close the plant if the Union came in, and to fire union adherents or to make conditions so difficult that they would quit, and that he had interrogated employees as to what they knew about the Union, stated that he knew who had signed union cards, and urged employees to influence others not to join the Union. By these actions, the Board concluded, the Company had violated Section 8(a)(1) of the Act. The Board further found that the increase in Greer's "can dump" assignments and Byer's striking him on the arm were both motivated by Greer's union activity, and caused Greer to quit his job. Consequently, the Board concluded that the Company had constructively discharged Greer in violation of Section 8(a)(1) and (3) of the Act. But Baker, the Board found, had been discharged for leaving the gas tank valves open, not for his union activity. Finally, the Board found that the Company's refusal to bargain with the Union on and after April 25, 1963, the date the Union obtained majority status, violated Section 8(a)(5) of the Act.<sup>7</sup>

The Board's order (J.A. 101-02, 107), directs respondent to cease and desist from threatening, unlawfully interrogating, and discriminating against employees because of union activity, from requesting any employee to influence other employees to drop out

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<sup>7</sup> The Board dismissed allegations in the complaint that Byer had discriminatorily discharged Vaughn and that other supervisors had engaged in unlawful conduct (J.A. 86-87, 91, 95-96).

of any labor organization, and from interfering with, restraining, or coercing employees in any other manner in the exercise of rights guaranteed by Section 7 of the Act. The order also directs respondent to cease and desist from refusing to bargain with the Union, to bargain with it upon request, to reinstate John Greer to his former position, and to make him whole for any loss of earnings suffered as a result of the discrimination against him. Finally, the order directs respondent to post appropriate notices.

#### SUMMARY OF ARGUMENT

1. Byer's threats, interrogations, and claims to know who the union adherents were manifestly violated Section 8(a)(1) of the Act. E.g., *Joy Silk Mills, Inc. v. N.L.R.B.*, 87 U.S. App. D.C. 360, 185 F. 2d 732, cert. denied, 341 U.S. 914. Three employees testified to Byer's conduct, which he denied, and the Trial Examiner and the Board credited their testimony. Credibility resolutions, supported, as here, by substantial evidence, will not be disturbed upon review. *Joy Silk Mills, Inc. v. N.L.R.B.*, *supra*, 87 U.S. App. D.C. 369, 185 F. 2d at 741.

2. Greer's constructive discharge clearly violated the Act. *Palm Beach Broadcasting Corp.*, 63 NLRB 597, 608-13, enforced, 155 F. 2d 805 (C.A. 5); *N.L.R.B. v. Saxe-Glassman Shoe Corp.*, 201 F. 2d 238, 243 (C.A. 1); *Bausch & Lomb Optical Co. v. N.L.R.B.*, 217 F. 2d 575, 578 (C.A. 2). Greer quit after Byer had threatened to make it so hard for Greer that he would "fire himself," had markedly increased Greer's "can dump" assignments, had taunted

him on account of his union membership, and had struck him on the arm apparently because Byer thought Greer had been discussing union affairs with Hibbard. Respondent's claim that Greer's can dump assignments increased because the regular can dump driver, Jenkins, quit is refuted by evidence that the increases began before Jenkins left and continued after he was replaced. And the Board properly discredited Hibbard's testimony that he did not see Byer strike Greer on the ground that Hibbard's testimony was confused, equivocal, lacking in candor, and contradicted by Byer himself. Byer's claim that he could not have hit Greer because he (Byer) was then suffering from a severe hand injury was also properly rejected not only because Byer was not a trustworthy witness, but also because Greer presented documentary evidence that he had been injured.

3. The Company's undenied refusal to bargain with the Union on and after April 25 violated Section 8(a)(5) and (1) of the Act. The Company defends this refusal on the ground that the Union's two requests for recognition and bargaining occurred a few days before the Union achieved majority status; in the absence of a third request thereafter, the Company argues it may not be found to have refused to bargain in violation of Section 8(a)(5) and (1) of the Act. The Board properly rejected this defense. Initially, the Company representative's response to the Union's prior bargaining demands—stating after the first that he “wasn't interested in talking to the Union,” hanging up the phone, and subsequently declining even to reply to the second—demonstrates that

a third formal request would have been futile. Furthermore, the Union's filing of a certification petition constituted a continuing demand for recognition. The Company's refusal to recognize the Union after it achieved majority status thus violated Section 8(a)(5) and (1) of the Act. *N.L.R.B. v. Burton-Dixie Corp.*, 210 F. 2d 199, 200, 201 (C.A. 10); *Sco-bell Chemical Co. v. N.L.R.B.*, 267 F. 2d 922 (C.A. 2) (alternative ground).

4. Assuming, *arguendo*, that the Union's failure formally to request bargaining subsequent to April 25 precludes a finding that the Company has violated Section 8(a)(5) of the Act, the Board's order directing the Company to bargain with the Union upon request should nevertheless be enforced. It is undenied that on April 25 the Union represented a majority of the Company's employees. The Company was thus under a duty, upon request, to recognize and treat with the Union as its employees' collective bargaining agent. The Board's order requires no more. Nor may the Company argue that the Union's majority may have been dissipated since April 25, so that it would be inequitable now to order the Company to bargain. If there has been a loss in union support, that loss may fairly be attributed to the Company's subsequent unfair labor practices. To permit the Company to rely on the Union's loss of majority as a defense to a bargaining order would be to permit it to profit by its own unfair labor practices.

5. Finally, the Board properly dismissed that portion of the complaint charging respondent with having discharged Baker on account of his union activity.



Baker had not engaged in any union activity until he joined the Union the night before his discharge, there is no evidence that the Company knew he had signed up, employees much more active in support of the Union than Baker were not discharged, and Byer's statement that Baker was discharged for failing to turn off gas valves was corroborated by the uncontradicted testimony of Company President Abe Byer.

### ARGUMENT

#### I. Substantial Evidence Supports the Board's Finding That the Company Violated Section 8(a)(1) and (3) of the Act

##### A. *Byer's threats, interrogation, and claims that he knew who supported the Union were unlawful*

As we have shown, Byer interrogated employees about their knowledge of union activity, claimed to know who the union adherents were, and threatened to fire them or make their jobs so unpleasant that they would quit, and to close the plant if the Union won a majority. He further urged Baker to convince other employees to oppose the Union because "they wasn't going to have no union." These actions are classic violations of Section 8(a)(1). See, e.g., *Joy Silk Mills, Inc. v. N.L.R.B.*, 87 U.S. App. D.C. 360, 185 F. 2d 732 (citing authorities), cert. denied, 341 U.S. 914; *N.L.R.B. v. George P. Pilling & Sons Co.*, 119 F. 2d 32 (C.A. 3); *N.L.R.B. v. Lester Bros.*, 301 F. 2d 62 (C.A. 4). The Company denies that Byer made the statements attributed to him. But three employees testified that he did, and the Examiner and the Board discredited Byer's denials. This Court has

held that "credibility of witnesses is a matter for Board determination, and not for this court" (*Joy Silk Mills, Inc. v. N.L.R.B.*, *supra*, 86 U.S. App. D.C. at 369, 185 F. 2d at 741) and the Trial Examiner's thoughtful analysis of his credibility resolutions (J.A. 87, 89-91) entitles his judgments to affirmance here.

**B. Greer's constructive discharge violated the Act**

The Board has long held that an employer who harasses an employee and assigns him to less desirable work in order to induce the employee to quit "constructively" discharges him. E.g., *Palm Beach Broadcasting Corp.*, 63 NLRB 597, 608-13, enforced, 155 F. 2d 805 (C.A. 5); *Eastern Die Co.*, 142 NLRB 601, petition for enforcement filed, No. 6356, 1st Cir. June 22, 1964. The courts of appeals have agreed with the Board that constructive discharge in retaliation for union activity violates the Act. *N.L.R.B. v. Palm Beach Broadcasting Corp.*, *supra*; *N.L.R.B. v. Saxe-Glassman Shoe Corp.*, 201 F. 2d 238, 243 (C.A. 1); *Bausch & Lomb Optical Co. v. N.L.R.B.*, 217 F. 2d 575, 578 (C.A. 2). Were the law otherwise, employers could easily evade the Act's prohibition of discharges for union activity.

The Board properly applied the constructive discharge doctrine here. Byer had warned Greer that he (Byer) would "make it so damn hard" for Greer that he would quit; and, beginning in June, Greer's can dump assignments began to increase. Later, Byer taunted Greer, "you're a big man, John, but it don't mean a damn thing to me," claimed that Greer had been giving him trouble ever since "you fellows

started with the Union," and told him to "get the Union men to find [you] a job." In August, after union supporters Baker and Vaughn had left, and after Greer's can dump assignments had increased still further, Byer said to Greer "All your boys are leaving you here, John; what you gonna do?" Finally, on September 18, Byer came up behind Greer, struck him on the arm and said, "I hope I didn't interrupt your damn conversation," referring, apparently, to a conversation about the Union Byer thought Greer was having with Hibbard, a welder with whom Greer was working. When Greer remonstrated with Byer for having struck him, Byer invited him to quit. Following the rash of increased can dump assignments, Byer's repeated taunts, and the blow on the arm, Greer predictably accepted the invitation. The Board's constructive discharge finding is thus supported by substantial evidence.

Respondent claimed that Greer's can dump assignments had increased because Jenkins, the regular can dump driver, quit, and not because of Greer's union activity. But Greer's assignments began to increase before Jenkins quit (J.A. 98; 68, 73), and Byer admitted that the Company replaced Jenkins with another driver soon after Jenkins left (J.A. 80). The Board thus rightly rejected respondent's explanation of Greer's increased can dump assignments (J.A. 98).

Byer and Hibbard, the welder, disputed Greer's testimony that Byer struck him. Hibbard testified that after Byer had left the truck Greer asked Hibbard if he had seen Byer strike him, and that he (Hibbard) had responded by asking Greer if Byer

had struck him, thus contradicting Greer's claim that Hibbard had said "I wouldn't take that" (J.A. 29). The Board rejected Hibbard's testimony on the ground that it was confused and equivocal (J.A. 99). Thus, when Hibbard was asked on cross-examination whether he had said "I wouldn't take that," Hibbard answered "I probably agreed with Johnny," and then testified that he agreed with Greer's comments about "working conditions," which he later amended to "the weather" (J.A. 65, 66). Later, Hibbard testified that he "could have" said "he wouldn't take that" (J.A. 65). Further, by testifying that Byer was not irritated when he said "I hope I didn't interrupt your damn conversation," Hibbard contradicted Byer's own testimony (J.A. 67, 76). In short, Hibbard's testimony was properly discredited.

Byer testified that he could not have struck Greer because he (Byer) was, at the time, suffering from a severe finger injury (J.A. 99). But the Trial Examiner credited Greer, relying upon a doctor's statement attesting to Greer's injury (J.A. 84), and upon the possibility that Byer could have struck Greer with the edge of his hand or his fist (J.A. 99). Since the Board's finding that Byer struck Greer is supported by substantial evidence, contradictory testimony is not sufficient to warrant setting aside the finding. *Joy Silk Mills, Inc. v. N.L.R.B.*, *supra*, 86 U.S. App. D.C. 369, 185 F. 2d at 741.

## II. The Board Properly Ordered the Company to Bargain With the Union

### A. *The Company's failure to bargain with the Union violated Section 8(a)(5) (1) of the Act*

The law is well settled that an employer who refuses to bargain with a union which represents a majority of his employees violates Section 8(a)(5) and (1) of the Act, unless his refusal is predicated upon a good faith doubt of the union's majority. See *UMW v. Arkansas Oak Flooring Co.*, 351 U.S. 62, 71-72 and n. 8; *Joy Silk Mills v. N.L.R.B.*, 87 U.S. App. D. C. 360, 185 F. 2d 732, 741; *N.L.R.B. v. Trimfit, Inc.*, 211 F.2d 206 (C.A. 9). The Company does not deny that it rejected the Union's oral and written bargaining requests and that it continued to refuse to bargain after the Union attained its majority. Nor is there evidence that the Company had a good faith doubt of the Union's majority. On the contrary, a Company representative responded to the Union's telephoned bargaining request by stating that "he wasn't interested in talking to the Union" and by hanging up the phone. The Company never responded to the Union's written request.

The Company defends its failure to recognize and bargain with the Union on the ground that the Union's two bargaining requests preceded its attainment of majority status by a few days. The Board rejected this defense on two grounds: first, a third request for recognition would obviously have been futile; second, the Union's filing of a representation petition constituted a continuing demand for recognition. Reason and authority support the Board's position.



The courts of appeals have agreed with the Board that an employer violates the Act by rejecting a bargaining request without questioning the Union's majority, where the union attains a majority shortly thereafter, where the union's actions are tantamount to a continuing demand for recognition, and where a further formal request would have been futile. *N.L.R.B. v. Burton-Dixie Corp.*, 210 F. 2d 199, 200, 201 (C.A. 10); *Scobell Chemical Co. v. N.L.R.B.*, 267 F. 2d 922 (C.A. 2) (alternative ground); *N.L.R.B. v. Superior Fireproof Door & Sash Co.*, 289 F. 2d 713, 723 (C.A. 2). Cf. *Joy Silk Mills v. N.L.R.B.*, *supra*, 87 U.S. App. D.C. at 369, 185 F. 2d at 741 ("request for recognition need not be *in haec verba* so long as there was one by clear implication") (alternative ground). In *Burton-Dixie*, *supra*, the union demanded recognition one day before it obtained a majority. Without questioning the union's right to recognition, the Company deferred responding to its bargaining demand. The union struck and filed a representation petition, but told the Company the petition would be withdrawn if the Company agreed to bargain. Thereafter, a company official told a union representative that the union would "never get in" and ordered him off company property. The court of appeals, affirming the Board, held that the union's bargaining request was continuing, that a further request "would have been utterly vain and useless and a mere formality" (210 F. 2d at 201) and that consequently the company's conduct violated Section 8(a) (5) of the Act even though the union lacked a majority when it initially sought recognition.

*Scobell Chemical Co. v. N.L.R.B.*, *supra*, is similar. There the union demanded recognition, and without questioning the union's majority, the company flatly refused to bargain. The union struck the next day. The court held that the record supported the Board's finding that the union had a majority when it requested recognition. Alternatively, it held, even if the union lacked a majority when it formally sought recognition, a majority of the employees joined the picket line and any further demand would have been futile. The court affirmed the Board's conclusion that the union's picketing constituted a continuing demand for recognition, making another, formal bargaining request unnecessary.<sup>8</sup>

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<sup>8</sup> Respondent relied in its brief to the Board upon *Greenville Cotton Oil Co.*, 92 NLRB 1033 for the proposition that a bargaining demand may not continue. Its reliance was misplaced.

In *Greenville*, after a majority union demanded recognition, the employer refused to bargain and committed other alleged unfair labor practices which dissipated the union's majority. These events occurred more than six months before the union filed unfair labor practice charges, and Section 10 (b) thus prohibited the Board from issuing a complaint based upon them. The Union argued, however, that since it had again demanded recognition less than six months before it filed charges, the Board could find the later refusal to bargain unlawful in light of the employer's earlier unlawful conduct. The Board disagreed, holding that Section 10(b) precluded it from finding the earlier conduct unlawful, and therefore from disregarding the union's lack of a majority when it again demanded recognition within the 10(b) period. The Board's decision was affirmed. *American Fed'n. of Grain Millers v. N.L.R.B.*, 197 F. 2d 451 (C.A. 5).

Thus, *Greenville* does not stand for the proposition that a bargaining demand may not continue, but rather that an obli-

We submit that the *Burton-Dixie* and *Scobell Chemical Co.* cases are applicable here. Clearly, a third bargaining demand would have been futile. Not only did respondent categorically refuse to bargain with the Union, but Byer had told several employees, including Greer the Union's principal proponent, that he never would "have no Union down here." Furthermore, the Board rightly reasoned that if a strike for recognition constitutes a continuing bargaining demand (*N.L.R.B. v. Burton-Dixie Corp.*, 210 F. 2d 199, 200, 201 (C.A. 10), *Scobell Chemical Co. v. N.L.R.B.*, 267 F. 2d 922 (C.A. 2)), so may the filing of a representation petition. Otherwise, "the Union here . . . [would be] in a worse position than the union in *Scobell* for having followed peaceful procedures in pressing its continuing demand" (J.A. 94).

***B. In any event, the Board's order that the Company bargain with the Union is a reasonable exercise of the Board's broad remedial powers***

The Board held that even if a finding that the Company violated Section 8(a)(5) of the Act was barred by the Union's failure formally to demand recognition after it had a majority, the Board would nevertheless order the Company, upon request, to bargain with the Union, in order to remedy the Company's other unfair labor practices. *Greystone Knitwear Corp.*, 136

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*gation to bargain* may not, where the union loses its majority and that loss cannot be attributed to the employer's unfair labor practices. See *American Fed'n. of Grain Millers v. N.L.R.B.*, 197 F.2d 451, 454 (C.A. 5).

NLRB 573, enforced, 311 F. 2d 794 (C.A. 2). It is well settled that a Section 8(a)(5) violation is not a prerequisite to a Board bargaining order. *Piasecki Aircraft Corp. v. N.L.R.B.*, 280 F. 2d 575, 591-92 (C.A. 3), cert. denied, 364 U.S. 933; *Editorial "El Imparcial" v. N.L.R.B.*, 278 F. 2d 184, 187 (C.A. 1); *N.L.R.B. v. Stow Mfg. Co.*, 217 F. 2d 900, 904-905 (C.A. 2) cert. denied, 348 U.S. 964; *D. H. Holmes v. N.L.R.B.*, 179 F. 2d 876, 880 (C.A. 5). A bargaining order is clearly appropriate here. The Union undeniably had a majority on April 25, the Company was therefore obliged to bargain with it upon request, and the Board's order merely requires it to do so. "This provision of the order does not depend upon a previous demand by the Union or a refusal by . . . [the Company]. It looks to the future and only in the event such request shall be made will . . . [the Company] be required to bargain collectively with the Union." *Summit Mining Corp. v. N.L.R.B.*, 260 F. 2d 894, 900-901 (C.A. 3); *N.L.R.B. v. Caldarera*, 209 F. 2d 265, 268-269 (C.A. 8); see also, *Texarkana Bus Co. v. N.L.R.B.*, 119 F. 2d 480, 484-85 (C.A. 8).

A bargaining order is not improper here because the Union may have lost its majority subsequent to April 25, 1963. If it has, and the record is silent on this point, that loss may fairly be attributed to the Company's unfair labor practices. See *N.L.R.B. v. Stow Mfg. Co.*, *supra*; *Greystone Knitwear Corp.*, *supra*. Thus, to permit the Company to plead a possible Union loss of majority as a bar to requiring it now to bargain with the Union would be to permit it to profit by its own unfair labor practices. See

*Piasecki Aircraft Corp. v. N.L.R.B.*, 280 F. 2d 575, 591 (C.A. 3), cert. denied, 364 U.S. 933; *Medo Photo Supply Corp. v. N.L.R.B.*, 321 U.S. 678.<sup>9</sup>

### III. Substantial Evidence Supports the Board's Finding That Baker was Not Discriminatorily Discharged

Herbert Byer testified that he discharged Baker after Beech, Baker's supervisor, had informed Byer that Baker left gas tank valves open, thereby endangering company property (J.A. 77, 78-79). Abe Byer corroborated that testimony. He stated that he had seen Beech turn the valves on the tank Baker had been using just after Baker clocked out (J.A. 83). The Board found that Baker's belief that he had shut the gas off was mistaken, and rejected the contention that he had been discharged for union membership because "there . . . was not a scintilla of evidence" that the Company knew that Baker had joined the Union" and because "the Company did not discharge outright any other Union members" (J.A. 96, 97).

The Union argues that the Board should have inferred from the evidence that Baker had turned the valves off (Br., p. 12). Even if he had not, the Union contends, the Board should have found that the Company did not discharge him for that mistake but for

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<sup>9</sup> The most the Company can here assert as a defense to a bargaining order to remedy its unfair labor practices is that the Union's majority *may* have been dissipated. Even a showing that a union majority *has* been dissipated is not a defense to a bargaining order where, as here, that dissipation may fairly be traced to the employer's unfair labor practices. See *N.L.R.B. v. Stow Mfg. Co.*, 217 F. 2d 900 (C.A. 2) cert. denied, 348 U.S. 964; *D. H. Holmes Co. v. N.L.R.B.*, 179 F. 2d 876, 879-880 (C.A. 5).



his union activity (Br., p. 13). But Baker testified that he had no contact with the Union until the night before his discharge (J.A. 49, 56-57), and the Union does not explain how Byer could have learned so quickly that Baker had joined up. The Union argues that since Byer expressed disbelief when Baker denied knowledge of union activity, the Board should have inferred that the Company thought Baker was pro-Union and discharged him for that. Even if the Board could have drawn such an inference, the inference it did draw was reasonable, and the Board's choice between reasonable conflicting factual inferences will not be disturbed on review. *Radio Officers' Union v. N.L.R.B.*, 347 U.S. 17, 48, 49; *N.L.R.B. v. Nevada Consolidated Copper Corp.*, 316 U.S. 105, 106; Davis, *Administrative Law*, Sec. 29.05 (1958). In fact, the Board's conclusion is supported by substantial evidence.

Baker was but one of at least 31 Company employees who favored the Union. Furthermore, the record shows that he did not even sign a union card until late July, nearly 5 months after the Union began its organizational activities and over 3 months after the Union had attained majority support among the Company's employees. Indeed, this was the first time anyone had spoken to Baker about joining the Union (J.A. 56). Under these circumstances, it would have been difficult to conclude that the Company singled out Baker for a discriminatory discharge; especially so, since employee Vaughn, who Byer knew was a un-

ion member (J.A. 89) and who had solicited other employees to join, was not discharged.<sup>10</sup>

In sum, the Trial Examiner determined on the basis of the conflicting testimony of witnesses whom he alone saw and heard that Baker had failed to turn off the gas before leaving work and had been discharged for his oversight. The evidence in support of this conclusion—the testimony of Herbert and Abe Byer, the lack of Company knowledge that Baker had signed a union card, the insignificant role Baker played in the Union organizational campaign—is substantial.<sup>11</sup> Accordingly, even if this Court would have reached a different conclusion had the case been before it *de novo*, the Trial Examiner's decision, adopted by the Board, is entitled to stand. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488.

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<sup>10</sup> The Examiner found that Vaughn quit of his own accord (J.A. 95-96) and that finding was not excepted to. Only Greer, the chief union protagonist, who had signed up 17 of the 31 employees who joined the Union, was discriminated against on account of union activity—and even he was not discharged outright.

<sup>11</sup> The Union criticizes the Trial Examiner for crediting Herbert Byer here, while discrediting his testimony elsewhere. But Byer's testimony concerning Baker's discharge was corroborated by Abe Byer, an unimpeached witness. And every statement made by an unreliable witness is not *ipso facto* false.

CONCLUSION

For the foregoing reasons, the Board requests the Court to deny the petition to review and to enforce the Board's order in full.

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*National Labor Relations Board.*

November 1964.

## APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

## UNFAIR LABOR PRACTICES

Sec. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

\* \* \* \*

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization:

\* \* \* \*

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

\* \* \* \*

## PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10

\* \* \* \*

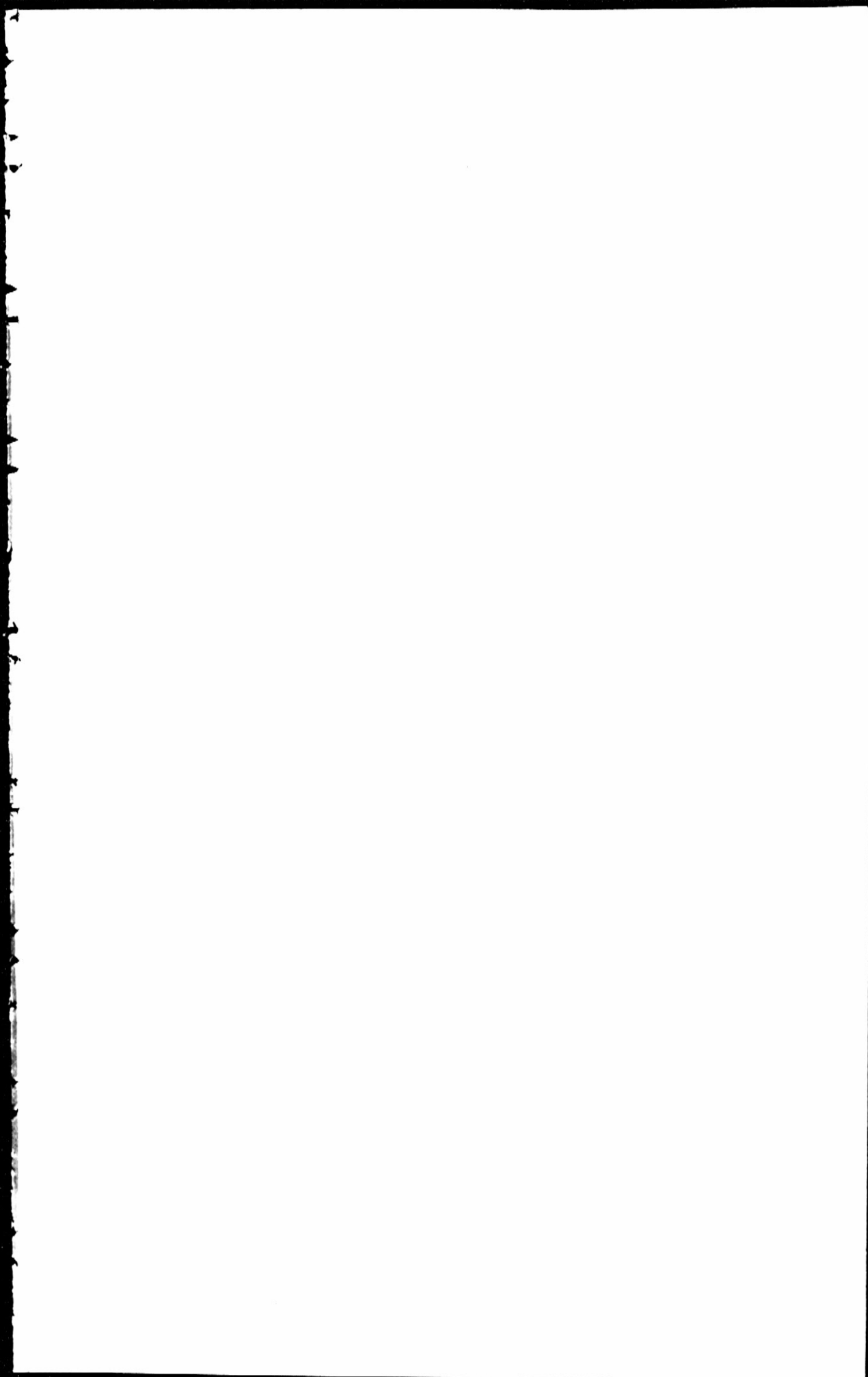
(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court

shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. \* \* \*

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part of relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems

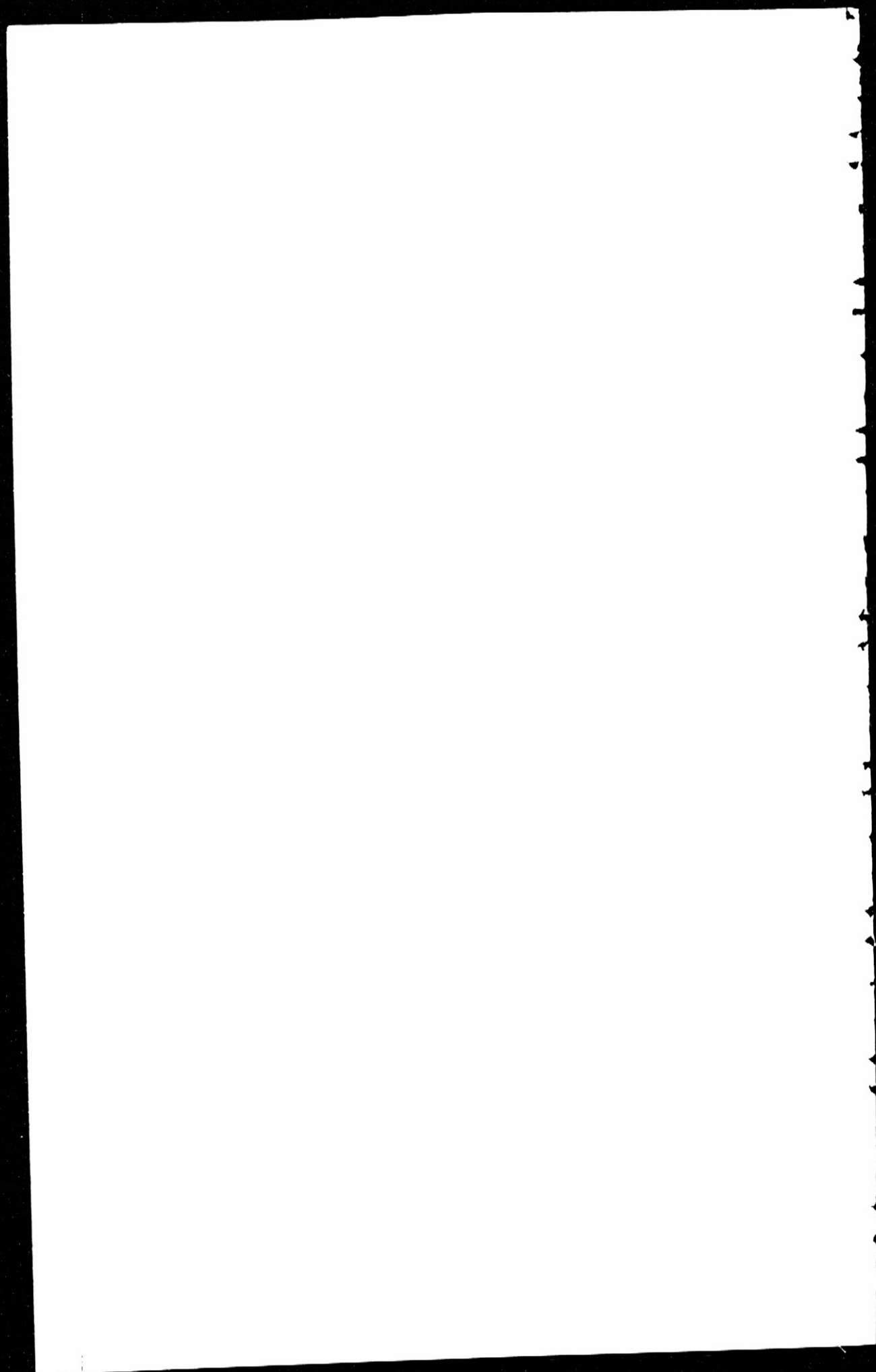


just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.



③

**CLERK**



### **QUESTION PRESENTED**

Whether the Board properly directed the Respondent, upon request, to bargain collectively with the Union as the statutory bargaining agent of Respondent's employees within the bargaining unit.

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(NOTE: The Pre-Hearing Conference Stipulation in this case sets out four issues. The question presented by Respondent in this Brief is included in Issue 4, defined in the stipulation. This is the only issue as to which Respondent wishes to address the Court.)



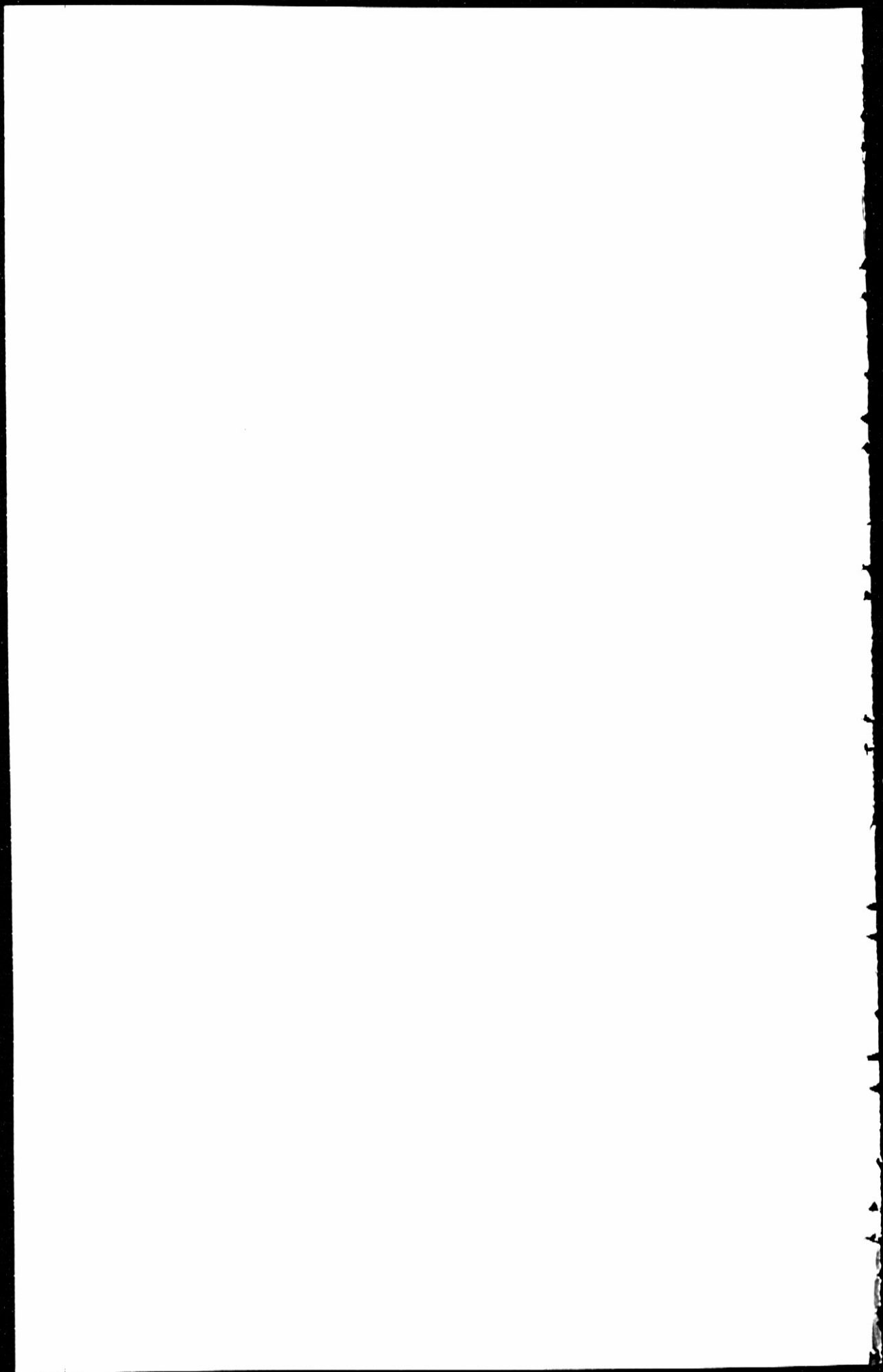
## INDEX

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	Page
Jurisdictional Statement .....	1
Preliminary Statement .....	2
Statement of the Case—	
The 8 (a) (5) Violation .....	2
The Board's Decision and Order—	
The 8 (a) (5) Charge .....	3
Summary of Argument—	
The Refusal to Bargain .....	3
Argument—	
The Board's Order That The Respondent Bar- gain With The Union Is Improper .....	4
Conclusion .....	8

## CASES CITED

	Page
American Federation of Grain Millers v. N.L.R.B. (CA 5), 197 F. 2d 451 (1952) .....	6
Editorial "El Imparcial" Inc. v. N.L.R.B. (CA 1), 278 F. 2d 184 (1960) .....	7
Greystone Knitwear Corp. and Donwood Ltd., 136 N.L.R.B. 573 (1962) .....	6
Greystone Knitwear Corp. and Donwood Ltd., 136 N.L.R.B. 575 .....	6
Greystone Knitwear Corp. and Donwood Ltd., 136 N.L.R.B. 575-576 .....	7
D. H. Holmes, Ltd. v. N.L.R.B. (CA 5), 179 F. 2d 876 (1950) .....	7
N.L.R.B. v. Burton Dixie Corp. (CA 10), 210 F. 2d 199 (1954) .....	5, 7
N.L.R.B. v. Everctt Van Kleeck & Co., Inc. (CA 2), 189 F. 2d 516 (1951) .....	7
N.L.R.B. v. Greystone Knitwear Corp. (CA 2), 311 F. 2d 794 (1963) .....	6
N.L.R.B. v. Joe and Mike Caldarera, etc. (CA 8), 209 F. 2d 265 (1954) .....	7
N.L.R.B. v. National Biscuit Company (CA 3), 185 F. 2d 123 (1950) .....	7
N.L.R.B. v. Scott & Scott (CA 9), 245 F. 2d 926 (1957) .....	4
N.L.R.B. v. Stow Manufacturing Company (CA 2), 217 F. 2d 900 (1954) .....	7
N.L.R.B. v. Wilkening Manufacturing Company (CA 3), 207 F. 2d 98 (1953) .....	7
Piasecki Aircraft Corporation v. N.L.R.B. (CA 3), 280 F. 2d 575 (1960) .....	7
Scobell Chemical Co. v. N.L.R.B. (CA 2), 267 F. 2d 922 (1959) .....	5, 7
Texarkana Bus Company, Inc. v. N.L.R.B. (CA 8), 119 F. 2d 480 (1941) .....	7
Zall v. N.L.R.B. (CA 9), 202 F. 2d 499 (1953) .....	4



In the  
**UNITED STATES COURT OF APPEALS**  
For the District of Columbia Circuit

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No. 18,682

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LOCAL 152, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA,  
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,  
Respondent.

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No. 18,734

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

v.

AMERICAN COMPRESSED STEEL CORPORATION,  
Respondent.

---

On Petition to Review and on Cross-Petition for Enforcement of an Order of the National Labor Relations Board.

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**BRIEF FOR RESPONDENT**

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**JURISDICTIONAL STATEMENT**

Respondent concurs in the Jurisdictional Statements of the Union and the Board in their separate briefs and does not contest the question of jurisdiction.

## PRELIMINARY STATEMENT

The National Labor Relations Board (herein called the Board) has determined that the Respondent is in violation of Sections 8 (a) (1) (3) and (5) of the Act. As indicated in the footnote to its QUESTION PRESENTED, Respondent will address itself to one issue only: the order requiring Respondent, upon demand, to bargain collectively with the Union.

Respondent does not question the other elements of the Board's Decision and Order.

## STATEMENT OF THE CASE

### The 8 (a) (5) Violation

On April 18, 1963, the Union requested recognition as the bargaining agent of the production and maintenance employees of Respondent. Recognition was refused. On the same day the Union made written demand for recognition by letter. The letter was received in due course and Respondent made no reply. On April 22nd the Union filed with the Board its Petition for Certification.

The representation proceedings begun with the Union's Petition for Certification were terminated after the Union, on August 7, 1963, filed the charges which are the subject of this action.

On April 18th and April 22nd there were 61 employees within the appropriate bargaining unit and on these dates the Union held cards signed by twenty-six employees. It did not obtain the card of the thirty-first employee until April 25th. No formal demand for recognition was made by the union after its letter of April 18th.



## THE BOARD'S DECISION AND ORDER

### The 8 (a) (5) Charge

The Board found that the Union did not have a majority of the cards at the time of its actual demand and did not reach majority status until April 25th. This conclusion is supported by the evidence.

Upon this conclusion the Board directed the Respondent to cease and desist from refusing to bargain with the Union and to bargain with the Union at its request.

## SUMMARY OF ARGUMENT

### The Refusal to Bargain

On the days the Union made its requests for recognition and on the date of the Petition for Certification was filed, the Union did not in fact enjoy majority status. The Respondent therefore had no obligation to grant recognition — in fact, it had a duty to refuse the Union's request. The theory of the Board's order — the restoration of the status quo ante — therefore is without merit. The Board's order, in fact, would give the Union an advantage it did not enjoy on the date of its requests. This exceeds the equitable remedy of the restoration of the status which the Board seeks to make the basis of the remedy granted. The enforcement of the Order to Bargain would require exercise of the Court's authority contrary to the rule of the Court in the enforcement of the orders of administrative agencies.

## ARGUMENT

### **The Board's Order That The Respondent Bargain With The Union Is Improper.**

The law imposes on an employer a duty to recognize and bargain with a Union which represents a majority of his employees, unless his refusal to do so arises out of a good faith doubt that the Union in fact does represent a majority.

In its Order the Board placed great emphasis on the conduct of the Respondent here as evidence of lack of good faith doubt, and affirms this position in its brief. Such position begs the question. Our first concern here must be with the position of the Union. If it did not enjoy majority status at the time of its request, the good faith or lack thereof, or the presence of anti-union bias, does not enter the picture insofar as Respondent's duty to bargain is concerned. If the Union had in fact never acquired a majority status here, the conduct of the employer could not be used as a basis for the finding of the Board that the Union had the right to demand, and that the Company had the duty to grant, recognition.

Two elements must be proved if the employer is to be required to recognize the Union and bargain: 1) The Union must represent a majority of the employees within the appropriate unit, and 2) With this authority the Union must make "a clear and unequivocal demand for recognition." *Zall v. N.L.R.B.* (CA 9), 202 F. 2d 499 (1953). See also *N.L.R.B. v. Scott & Scott* (CA 9), 245 F. 2d 926 (1957).

True, the courts have recognized conduct other than oral or written communication between the Union and the Company as a satisfactory method of renewal by the Union of its demand for recognition. The only factor on which the Board can rely was the filing of the Petition

for Certification on April 22nd; but on this date the Union did not have a majority of the cards, and after it did acquire majority status, it did nothing to advise the Company of the fact, nor to renew its demand.

The position that the pending petition constituted a continuing demand is not sound in principle and is not supported by the authorities on which the Board relies.

The *Scobell* case (*Scobell Chemical Co. v. N.L.R.B.*, (CA 2), 267 F. 2d 922 (1959)) involved a demand by the Union when it did represent a majority of the employees. When the demand was refused, the Union struck and set up and maintained picket lines. The Court said that even assuming that the Union did not represent a majority of the employees at the moment of the express request, there can be no doubt that it represented a majority the next day at the time of the strike and picketing, that the presence on the picket line of a majority of the employees was proof of the Union's majority. Such assumption was unnecessary in view of the finding of the Board that at the time of the demand the Union held the cards of seven of the twelve employees. On the facts in *Scobell*, the Union had clearly established its right to recognition. The sole question before the Court there was that of good faith doubt, when in fact the Union did represent a majority.

The second case upon which the Board relies is *N.L.R.B. v. Burton Dixie Corp.* (CA 10), 210 F. 2d 199 (1954). Here, at a time when the Union in fact represented a majority of the employees, and within twenty-four hours after the Union had demanded recognition, the employer refused to talk with a Union representative who had come to discuss the question of recognition. The organizer was threatened with bodily injury and with violence and profanity by the company representative and ordered from the company property. The Court found that the company representative's conduct warranted a finding of re-

fusal to bargain. The conduct of the organizer was properly equated to a formal demand for recognition.

In this case, if the petition can be deemed to be a demand, it was made when the Union was not in position to make a legally effective demand, since it did not represent a majority of the employees. In *American Federation of Grain Millers v. N.L.R.B.* (CA 5), 197 F. 2d 451 (1952), the Court clearly rejects the doctrine that a demand for bargaining, which has been refused, will, without request, renew itself each day after the first refusal. The Board's treatment of the Grain Millers' case in its brief again begs the question. There must be a legal duty to bargain flowing from majority representation status of the Union. If this is absent, and it was absent here, there is no seed which can ripen a right in the Union.

The Board, in adopting the recommendation of the Trial Examiner, further justifies its order on the restoration of the "status quo ante" (IR 6). It relies for precedent on *N.L.R.B. v. Greystone Knitwear Corp.* (CA 2), 311 F. 2d 794 (1963). The Board's order was enforced by the Court of Appeals for the Second Circuit in a per curiam opinion. From the decision of the Board (*Greystone Knitwear Corp. and Donwood Ltd.*, 136 N.L.R.B. 573 (1962)) we find that at the time of the demand for recognition the Union had in its hands actual evidence of a majority (136 N.L.R.B. 575). In addition, this majority had been clearly established by a showing of cards before the commission of the unfair labor practices (p. 575). The finding upon which the order to bargain is based refers specifically to the Union's majority and the company's refusal to recognize the Union. The restoration of the status quo ante clearly involved a restoration of the Union to its former position of a majority union with the right to demand recognition.

The status quo is monolithic. It cannot be divided so that restoration will be made as to some of its elements and denied as to others. The situations of the individual parties can neither be improved or diminished. The decision in *Greystone Knitwear Corp. and Donwood Ltd.*, *supra*, and those of the cases cited by the Board in its decision in that case (136 N.L.R.B. at 575-576): *N.L.R.B. v. Everett Van Kleeck & Co., Inc.* (CA 2), 189 F. 2d 516 (1951); *NLRB v. Stow Manufacturing Company* (CA 2), 217 F. 2d 900 (1954); *Piasecki Aircraft Corporation v. N.L.R.B.* (CA 3), 280 F. 2d 575 (1960); *Editorial "El Imparcial" Inc. v. N.L.R.B.* (CA 1), 278 F. 2d 184 (1960); *D. H. Holmes, Ltd. v. N.L.R.B.* (CA 5), 179 F. 2d 876 (1950); *N.L.R.B. v. Joe and Mike Caldarera, etc.* (CA 8), 209 F. 2d 265 (1954); *Texarkana Bus Company, Inc. v. N.L.R.B.* (CA 8), 119 F. 2d 480, (1941), are consistent with this principle. All follow the rules set down in the *Burton Dixie Corporation*, *supra*, and *Scobell Chemical Company*, *supra*, cases, where at the time of its demand the Union did in fact have evidence of majority status and in some demonstrated or offered to demonstrate its proof of authority to the employer.

The Board erroneously misapplies the rule involved in the doctrine of the restoration of a party statu quo. Equitable in character and origin, its purpose is to return the parties to the positions which each held before the conduct or phenomenon involved in the subject litigation occurred. The Courts of Appeals, in the exercise of their powers of enforcement of orders of the Board, are guided by basic principles of equity. See: *N.L.R.B. v. National Biscuit Company* (CA 3), 185 F. 2d 123 (1950); *N.L.R.B. v. Wilkening Manufacturing Company* (CA 3), 207 F. 2d 98 (1953).

The order here is erroneous. It does not return the parties to their separate positions on the dates of the alleged refusal of recognition. On the contrary, it gives to the



Union a legal advantage — rights additional to those it then enjoyed — and correlatively puts upon the Respondent a legal responsibility additional to that it then carried. Neither the windfall nor the burden can be justified on any equitable principle. The Board, in effect, imposes a penalty on the Respondent; enforcement of penalties is not the general practice of Courts of Equity.

### CONCLUSION

Respondent respectfully submits that the Court should deny enforcement of the Order of the Board requiring Respondent to bargain with the Union at its request.

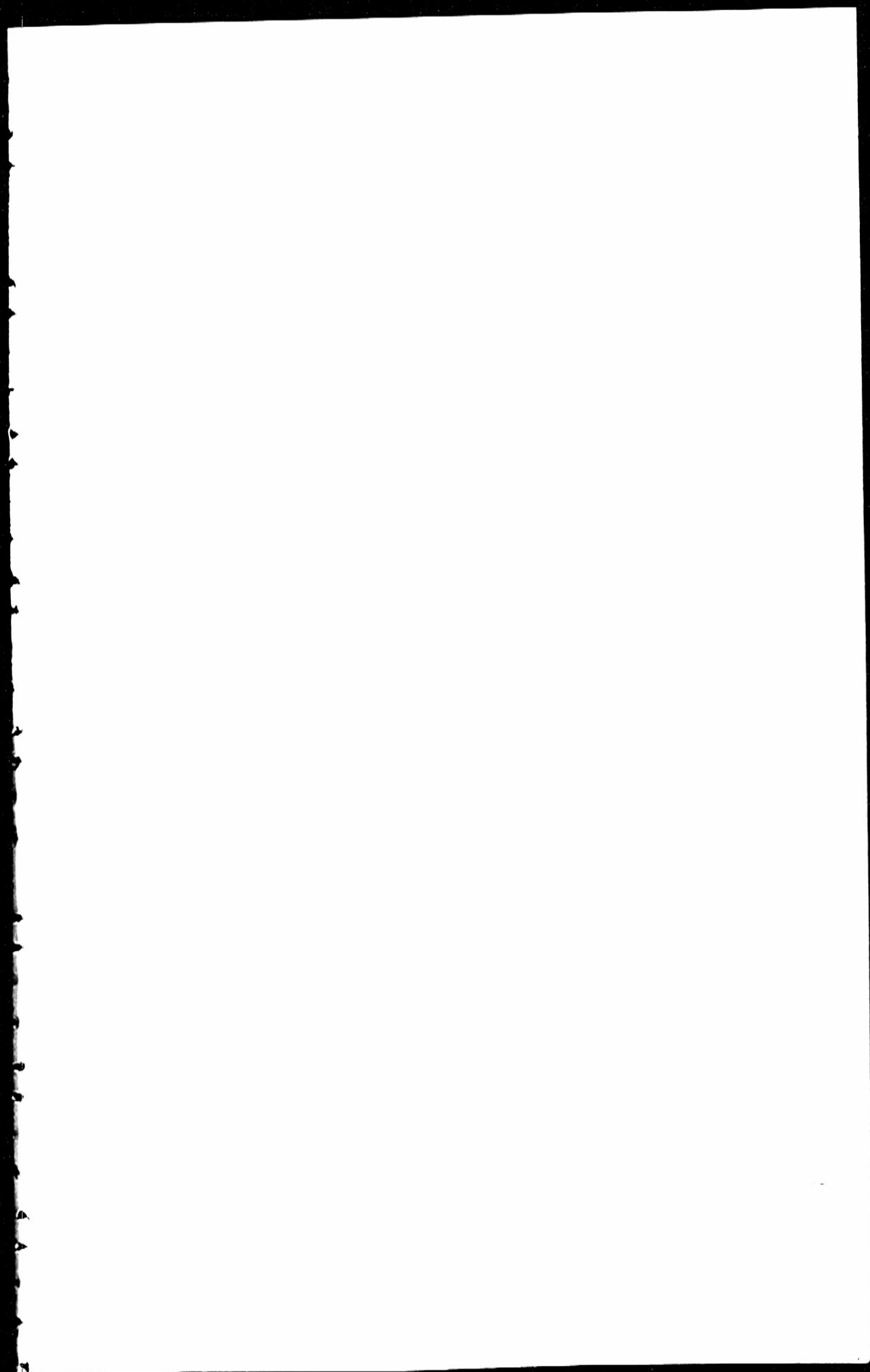
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pressed Steel Corporation,  
Respondent.



**BRIEF FOR PETITIONER IN NO. 18,682.**

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IN THE  
**UNITED STATES COURT OF APPEALS**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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No. 18,682.

LOCAL NO. 152, AFFILIATED WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMERICA,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,  
Respondent.

No. 18,734.

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

v.

AMERICAN COMPRESSED STEEL CORPORATION,  
Respondent.

---

On Petition to Review and Set Aside and on Cross-Petition to  
Enforce an Order of the National Labor Relations Board.

DAVID PREVIAINT,  
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FILED OCT 21 1964

*Nathan J. Paulson*  
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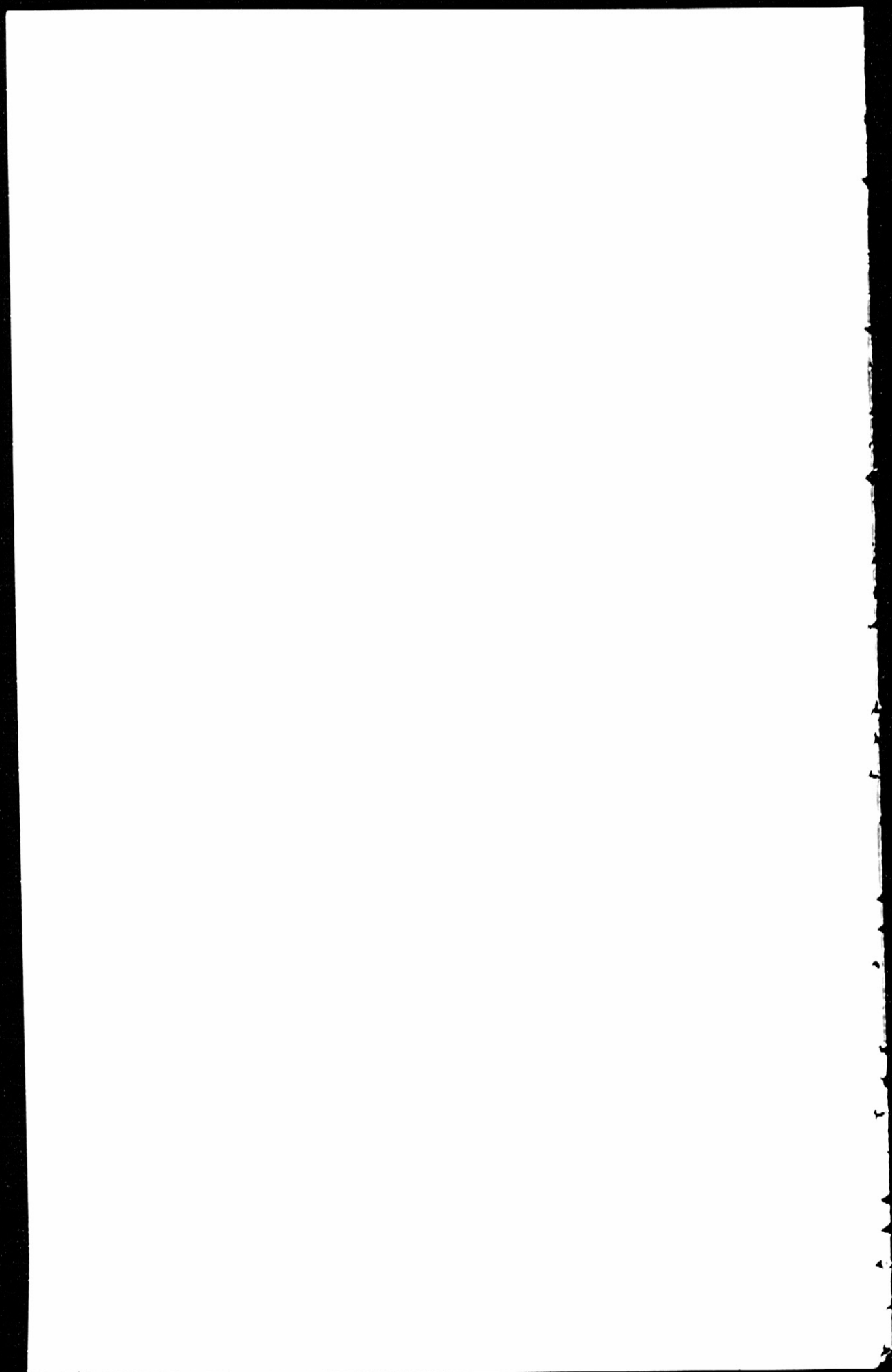
### **QUESTION PRESENTED.**

Whether the Board properly dismissed that portion of the complaint alleging that the company violated Sections 8 (a) (1) and (3) of the Act by constructively and/or in fact discharging employee Baker?\*

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\* In their Pre-Hearing Conference Stipulation, which was approved by the Court on July 24, 1964, the parties stipulated that four issues were presented. However, the question presented herein, which is properly encompassed within the first issue stipulated by the parties, is the sole issue as to which the Petitioner is a "person aggrieved" and which was the subject of an exception to the trial examiner's decision when the matter was considered by the National Labor Relations Board. Accordingly, Petitioner will address itself solely to this one issue.



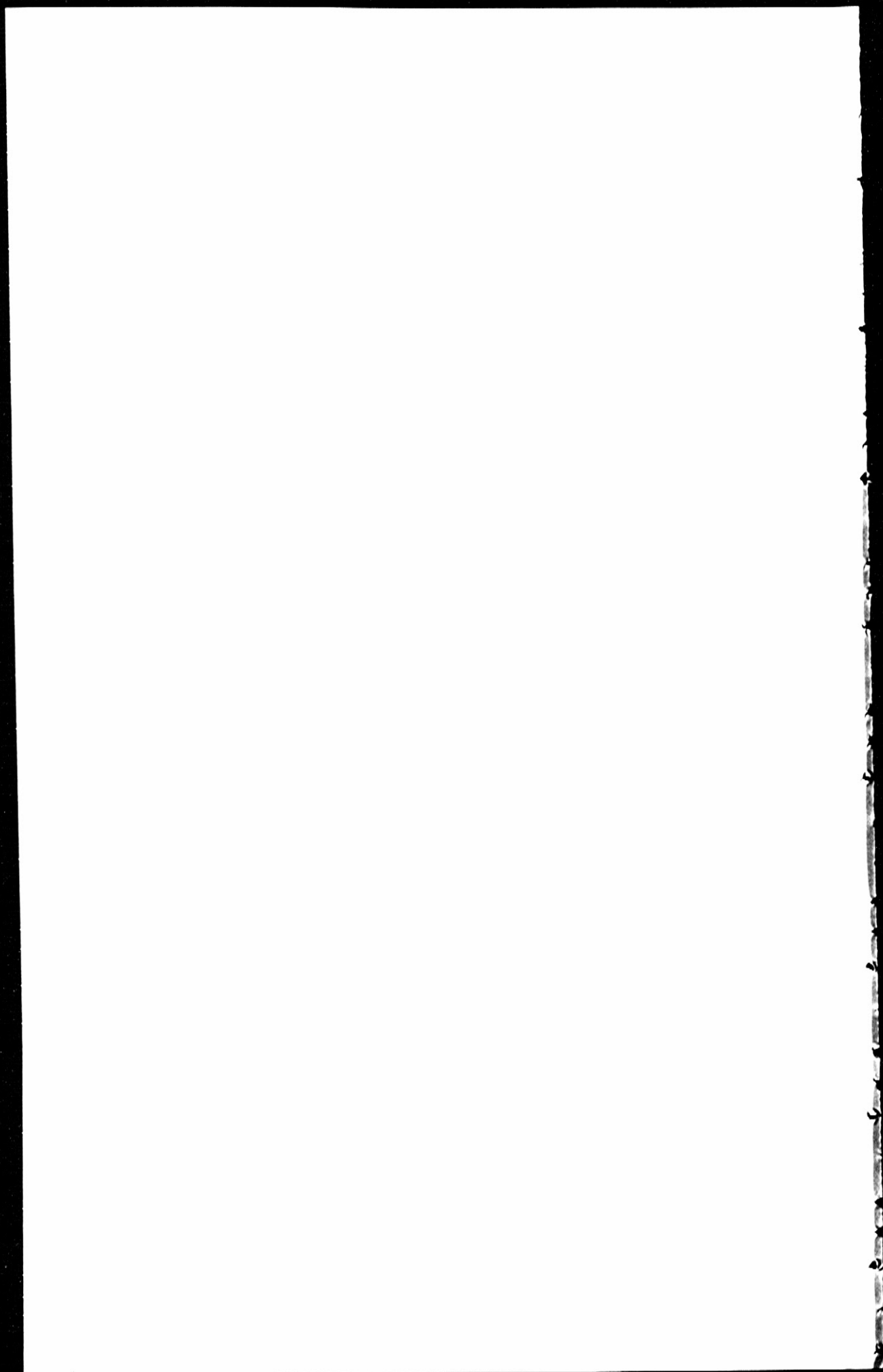


## INDEX.

	Page
Question Presented .....	Prefaced
Jurisdictional Statement .....	1
Preliminary Statement .....	2
Statement of the Case .....	3
1. Statement of the Facts Involved .....	3
2. The Proceedings Before the National Labor Re- lations Board .....	6
Statutes Involved .....	7
Statement of Points .....	8
Summary of Argument .....	8
Argument .....	10
Conclusion .....	15

### Table of Cases.

Universal Camera Corporation v. N. L. R. B., 340 U. S. 474 .....	15
---	----



IN THE  
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No. 18,734.

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v.

AMERICAN COMPRESSED STEEL CORPORATION,  
Respondent.

---

**BRIEF FOR PETITIONER IN NO. 18,682.**

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**JURISDICTIONAL STATEMENT.**

Case No. 18,682 is before the Court on the petition of Local No. 152, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Help-

ers of America, filed pursuant to Section 10 (f) of the Labor Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U. S. C., Sec. 151, et seq. (hereafter called the Act), to review and set aside, in part, a decision and order of the National Labor Relations Board (146 N. L. R. B. No. 172), issued on May 14, 1964.

Case No. 18,734 is before this Court on a Cross Petition for Enforcement filed by the National Labor Relations Board pursuant to Section 10(e) of the Act.

Accordingly, the jurisdiction of this Court is invoked under Sections 10(e) and (f) of the Act.

#### **PRELIMINARY STATEMENT.**

As more fully detailed in the Statement of Case that is to follow and in the Petition to Review in Case No. 18,682, the National Labor Relations Board (hereafter called the Board), has in the instant case held against the company-respondent as to certain violations of Sections 8(a)(1), (3) and (5) of the Act but dismissed the complaint against the company as to certain other instances of such alleged violation. Petitioner, the charging party below, now seeks to convince the Court to set aside only that portion of the Decision and Order of the Board which dismisses Paragraph 6 of the original complaint alleging that employee Robert Baker had been discriminatorily discharged by the company in violation of Sections 8(a)(1) and (3) of the Act. Accordingly, the Statement of the Case and Argument presented by the Petitioner will deal solely with the foregoing issue.

In all other respects the Petitioner supports the Cross Petition for Enforcement filed by the National Labor Relations Board in Case No. 18,734.



## STATEMENT OF THE CASE.

### 1. Statement of the Facts Involved.

Robert Baker was employed by American Compressed Steel Corporation from 1945 to 1952, again from 1954 to 1956 and finally from March 1963 to July 24, 1963 when he was discharged. At the time of his discharge Mr. Baker was a "burner" (J. A. 42-44).

On or about April 10th or 12th, 1963 while so employed by the company, and during an organizational campaign by the petitioning union, Mr. Baker was approached by Herbert Byer, a foreman or manager of the company and the son of the company's president, who inquired whether Baker knew anything about the union. When Baker denied any knowledge of the union or its activities, Byer said "I don't want a mistake, I'm not no fool, I do know something about it." Byer also told Baker that he was not going to have the union in the plant and that if a union came in he would fire everyone he thought was for the union (J. A. 48-49). In the same conversation Byer also said that he thought that Baker had been an instigator of union activities at another plant called Liberty Scrap (J. A. 48-49).

On April 23rd or 22nd, a similar conversation took place. On that occasion Baker was working with fellow employee Jackson when Byer walked over and told Jackson to go clock out. When Jackson left, Byer said to Baker "You must not appreciate your job." When asked what he meant, Byer said, "Well, you're in bad company." When Baker continued to express ignorance as to the meaning of Byer's words, the latter said "Well, you know what I'm talking about" (J. A. 49-50).

On or about April 27th or 28th, 1963, Mr. Byer once more asked Baker if he had learned anything about the

union. When Baker replied in the negative, Byer said "Yes you know." Byer insisted that he was no fool and that Baker had surely heard something about it. Byer then encouraged Baker to "talk to the fellows to vote for the union out, they wasn't going to get in there; they wasn't going to have no union" (J. A. 52).

On or about July 18, 1963, Byer invited Baker into his car and drove him down to the river bank where they parked. Byer questioned Baker as to how many hours he was working and how much he was making. Baker replied that he was working 51 hours a week and grossed about \$76.00. Byer then said that if the union got in, he would not be making that much nor working that many hours. Byer stated "I'd have to cut you down to 40 hours or less" (J. A. 55-56). He also repeated to Baker that he would fire everybody that he thought was for the union. He then amended the statement by saying, "No, I won't fire them, I'll make it so hard, they'll probably fire themselves" (J. A. 55).

On July 23, 1963 Robert Baker signed a union authorization card. He was discharged by Byer on July 24th allegedly because he had left open the valves on top of the oxygen and gasoline tank which connected to the burner's torch by a hose. Robert Baker continually denied that he had left the valves open (J. A. 45-46). The following testimony by Mr. Baker illustrates his position with respect to the company's alleged reason for discharging him:

Q. Did you ever leave the air pipes at any—the air valves open at any other time that you can recall since you've been operating cutting equipment?

A. Once, about '47, I think it was, when I first started cutting. And the hose busted, and the foreman of the yard, Mack Beech, he told me, he said, "Whenever you leave them," he said, "Always cut

them off. Your hose might bust, and the air will run out.”

So from that day on, since I've been burning, I shut them things off, every day at noon when I go to lunch, and every night. And also if I happen to leave and think I'll be gone, you know, twenty minutes, or a half hour, I'll shut them off. I never leave them on (J. A. 45-46).

It was pointed out at the hearing that there is a valve at the top of the tank that is turned on and off to regulate the out-flow of gas into the hose which leads to the torch. There are also valves down near the torch that cut off the gas at that point. Accordingly, assuming the valve at the torch was cut off, the only way for gas to escape would be if the hose itself had burst. It is the normal procedure in putting out the torch to turn off the valve down at the torch and then to turn off the valve on top of the tank. Mr. Baker testified that he remembers distinctly turning off both valves (J. A. 46-47) and he so told Mr. Byer:

And he said it wasn't cut off that morning. And so I said to him, I said, "Herb," I said, "I was cutting these things off when you were a little boy running around here in the yard with your father, coming in after school, or some Sunday coming down with your dad." I said, "I know I cut them off." I said, "The only way they could have got on is somebody to turn them on" (J. A. 47).

The testimony of Herbert Byer was that he hated to lose Baker because the latter was "an awfully good man" (J. A. 77). Moreover, Mr. Byer alleged that he had fired Baker solely because of "the *possibility* of the loss of gas and oxygen and the danger" (J. A. 79) (emphasis added). Byer knew that there was actually no loss of gas and that the hose had not burst (J. A. 79). In fact, Byer testified that on several occasions in the past when

hoses had burst as a result of someone having left the valves open, the men responsible were simply warned about the incident but were not discharged (J. A. 79-80).

## **2. The Proceedings Before the National Labor Relations Board.**

On the basis of the foregoing facts, the trial examiner found that the statements made by Byer to Baker regarding the union's activities at the plant constituted threats and interrogation in violation of Section 8 (a) (1) of the Act. However, he dismissed that portion of the complaint alleging that the discharge of Baker constituted a violation of Section 8 (a) (3) of the Act. He also found, on the basis of facts not herein presented, that other and further statements made by Byer to employees Greer and Vaughn similarly constituted violations of Section 8 (a) (1), that the discharge of John Greer because of his union activities violated Section 8 (a) (3) and that the Company had refused to bargain with the union in violation of Section 8 (a) (5) (J. A. 85-103).

Thereafter the Respondent excepted to those portions of the trial examiner's decision which found the Company in violation of the Act and the General Counsel excepted, *inter alia*, to that portion of the trial examiner's decision which dismissed the allegation of the complaint that Baker's discharge constituted a violation of Section 8 (a) (3) (J. A. 104-105).

The National Labor Relations Board adopted the findings, conclusions and recommendations of the trial examiner, with minor corrections not here relevant. By way of remedy the Board ordered the company to cease its unlawful threats and interrogation of employees, discrimination against employees because of their activities on behalf of or membership in the union and refusal to bargain with said union upon request (J. A. 105-109).

On July 8, 1964, Petitioner in Case No. 18,682 filed its Petition to Review and Set Aside that portion of the Board's decision previously referred to (J. A. 110-113). The Board, on July 29, 1964, answered the said Petition, filed its own Petition for Enforcement against American Compressed Steel Corporation (Case No. 18,734) and made a motion for consolidation of the two cases, which motion was granted.

### STATUTES INVOLVED.

The pertinent statutory provisions are Sections 7 and 8 (a) (1) and (3) of the Labor Management Relations Act of 1947, as amended, 61 Stat. 136, 29 U. S. C. Section 151, et seq.:

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

Sec. 8.(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7:

. . . . .

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .



### **STATEMENT OF POINTS.**

The Board erred in failing to find that there was substantial evidence in the record as a whole to support the allegation of the complaint that Robert Baker had been discriminatorily discharged by the company in violation of Section 8 (a) (3) of the Act.

### **SUMMARY OF ARGUMENT.**

- 1. The Board Was in Error in Its Apparent Finding That Baker Had in Fact Left the Valves Open on the Night Prior to His Discharge.**

Baker denied that he had left the valves open. The Trial Examiner credited Baker's testimony, stating, "I was never assailed by any doubt as to the testimony of Baker, who impressed me as an unusually fine witness . . ." (J. A. 90). Nevertheless, the Board's finding appears to be that the valves had been left open.

The finding of the Trial Examiner as approved by the Board was that he could not "discount entirely the possibility" that Baker had made a "mistake" (J. A. 96). The fallacy is that in order to find an 8 (a) (3) violation, the Board need not "discount entirely the possibility" that the employee did what the company said he did. The conclusive issue is whether or not "the mistake" was in fact the motivating force behind the discharge.

It was highly unlikely that such a mistake had been made by Baker in view of his many years of service with the company and the undeniable testimony that no gas has escaped and no hose had burst. (J. A. 45-47).

The only testimony which appears to contradict that of Baker was given by Abe Byer (J. A. 82-83). However, his entire testimony was that he saw a supervisor turn the knob on the tank after Baker had left the job. Obviously,

the supervisor could have been turning the knob on rather than off, or he could have been merely checking the valves and making a turning motion in the process. In practical terms, therefore, the testimony of Robert Baker that he had turned off the valves was not only fully credited by the Board but remains uncontradicted.

**2. Even If Baker Had "Made the Mistake" Spoken of by the Board the Record Compels the Conclusion That He Was Not Discharged for That Reason.**

It is not likely that the company discharged Baker for failing to turn off the valves. Baker had worked for the company from 1945 to 1956 with the exception of a seventeen (17) months absence in the period 1952-1954 (J. A. 96). He was described by a company witness as "an awfully good man" (J. A. 77). There was no actual loss of gas or bursting of hoses (J. A. 79). In fact, on previous occasions when the hose connecting the torch with the tank *had* burst as a result of the valves having been left open, none of the men involved had been discharged by the company (J. A. 79-80). Finally, the company's alleged reason for the discharge is particularly suspect in the light of its several violations of the Act as found by the Board in the instant case. The record compels the conclusion that the alleged reason for Baker's discharge was used as a pretext by the company to get rid of a pro-union employee.

**3. The Board Was in Error in Failing to Find That the Company Knew of Baker's Pro-Union Attitude and/or Activities.**

Recognizing that the foregoing findings were weakly based, the Board relied on its conclusion that "there was not a scintilla of evidence that the company . . ." knew of Baker's pro-union activities. This finding is as clearly wrong as the ones that preceded it. In the several conversations between Herbert Byer and Robert Baker, the

former continually professed not to believe Baker when the latter denied his union activities. In the same conversations, Byer threatened Baker to the effect that he would fire everyone he thought was for the union (J. A. 87-88, 90-91). Moreover, statements made to employees by supervisory personnel contained the bald admission that the company "knew who had signed union cards" (J. A. 88, 96-97).

#### **4. Conclusion.**

There is substantial evidence on the record considered as a whole to support a finding and conclusion that Baker had not left the valves open, that even if he had done so the incident was merely used as a pretext by the company to justify his discharge, that the company knew of Baker's pro-union activities and sentiments and that, for all these reasons, the company's discharge of Robert Baker constituted a violation of Section 8 (a) (3).

### **ARGUMENT.**

#### **1. The Board Was in Error in Its Apparent Finding That Baker Had in Fact Left the Valves Open on the Night Prior to His Discharge.**

As pointed out by the Board, "Baker stoutly maintained, both at the time and again on the witness stand, that he had shut off the gas before leaving work that night" (J. A. 96). The trial examiner's credibility finding with respect to Baker was as follows:

On the other hand, I was never assailed by any doubt as to the testimony of Baker, who impressed me as an unusually fine witness, testifying with high regard for the truth as he remembered it. Faced with a conflict in testimony between Baker and Byer, I credit the former. Having thus credited Baker, I likewise credit the testimony of Greer and Vaughn described above, as it is consistent with that of Baker,

in the sense that they attributed to Byer statements similar to those he made to Baker (J. A. 90-91).

This is undeniably as fine an endorsement of a person's credibility as could possibly be given to any individual by a trier of fact. Nevertheless, the Board appears to find that the valves had been left open by Baker, despite his stout denial, without actually disbelieving his word. This in itself demonstrates a rather glaring inconsistency in the Board's approach to this case.

The Board, through the trial examiner, explains its position as follows:

"I was very favorably impressed by Baker's demeanor as a witness, but cannot discount entirely the *possibility* that he simply made a mistake. Whether Baker's mistake—if *such it was*—should have been penalized by discharge, especially in the light of his long years of service, is not for me to judge" (J. A. 96) (emphasis added).

The obvious fallacy here is that to find a violation of Section 8 (a) (3) the Board is not called upon to "discount entirely the possibility" that the employee did what the Company said he did. Rather the Board is called upon to determine the employer's motivation in discharging said employee. Indeed this may well be the first time in the history of Board decisions that an 8 (a) (3) allegation of the complaint has been dismissed on the "*possibility*" that an employee had done something which might conceivably support a discharge, had the discharge been predicated upon said mistake.

The Board's obvious reluctance to believe that Baker had made "such a mistake" is quite understandable on the present record; for Baker has been cutting or burning for many, many years and had stated that since 1947 he had been particularly mindful of shutting off the valves

both on the torch and the tank whenever he left the job for even a short period of time (J. A. 45-46). The record is clear moreover that the only way the gas could escape after the torch valve had been shut off would be for the hose connecting the torch and the tank to burst. And that simply did not happen in the instant case (J. A. 46-47).

Herbert Byer's testimony does not stand in opposition to Baker's on the point. For he discharged Baker on the word of a foreman that the valves had been left open. Furthermore, the testimony of Herbert Byer was completely and emphatically discredited by the trial examiner (J. A. 90). The only testimony that appears to contradict that of Baker's is the testimony of Abe Byer (J. A. 82-83). Upon close examination, however, it appears that his testimony is hardly probative. He stated that two or three minutes after Baker left his station, Supervisor Max Beech walked up to the tank and "started turning the knob which had been left open on those tanks." The phrase "which had been left open" is obviously and entirely an unsupported assumption on the part of Abe Byer. Was Beech turning the valves on, or was he turning them off? Was Beech merely checking the valves and making a turning motion in the process? These questions, of course, remained unanswered and were not dealt with by the Board. Significantly, Max Beech was not put on the stand. Thus, Baker's testimony that he had turned the valves off remains unopposed and fully credited.

**2. Even if Baker Had "Made the Mistake" Spoken of by the Board, the Record Compels the Conclusion That He Was Not Discharged for That Reason.**

It is hardly likely that the employer would have discharged Robert Baker for failing to turn off the valves in view of his impressively long service with the company. As found by the Board, Baker worked for that company



from 1945 to 1956, with the exception of a seventeen-month absence in the period 1952-1954 (J. A. 96). Moreover, he was described by the company as "an awfully good man" (J. A. 77). Herbert Byer admitted that even though he felt Baker had not turned the valves off, there was no actual loss of gas and no bursting of the hose (J. A. 79). On previous occasions when the hose *had* burst in stations worked by other men, none of the men involved had been discharged by the company (J. A. 79-80). The company's alleged reason for the discharge is particularly suspect in the light of its general conduct in the instant case. It engaged in at least three separate instances of Section 8 (a) (1) violation consisting of threats and interrogation. The company was found to have violated Section 8 (a) (3) by discharging employee Greer. The company violated Section 8 (a) (5) of the Act by refusing to bargain with the majority union and instead engaged in acts and conduct designed to undermine the majority status of said union and rid the company of its presence.

In light of the foregoing circumstances, the record compels the conclusion that even if in fact Baker had not turned the valves off, that alleged reason for his discharge was simply used as a pretext by the company in getting rid of a pro-union employee.

**3. The Board Was in Error in Failing to Find That the Company Knew of Baker's Pro-Union Attitude and/or Activities.**

The Board concluded: "there is not a scintilla of evidence that the company knew of his action," referring apparently to Baker's signing of a union card the night before his discharge (J. A. 96). It is sufficient, of course, if the company knew of his pro-union attitude or activities, even if it did not know of his actual signing of a card. In fact, it is too clear to require citation that

"company knowledge" is sufficiently made out if it can be shown that the company *believed* that the dischargee was engaged in pro-union activities or harbored pro-union sentiments. The record considered as a whole yields very substantial evidence of company knowledge.

In the conversation between Herbert Byer and Robert Baker on April 10 or 12, "Byer professed not to believe" Baker's denial of his union activities. In fact, Byer threatened that he'd fire everyone he thought was for the union (J. A. 87). Again on April 27 or 28, Byer "expressed disbelief at Baker's denial" (J. A. 87). On July 18th Byer again threatened: "I'll make it so hard, they'll probably fire themselves" (J. A. 88). The foregoing testimony, which was fully credited, unqualifiedly indicates company knowledge or belief as to Baker's pro-union sentiments.

It is interesting to note that only three employees were the recipients of unlawful threats and interrogation on the part of the company, and all three were union proponents. It is further interesting to speculate why the company directed its statements at these three if the company in fact had no knowledge of their union propensities. Apparently and unhappily the Board eschewed such speculation.

In fact, the trial examiner found, and the Board adopted his finding, that Herbert Byer, the man who discharged Baker, was "less than candid, notably when he indicated that he had not heard of the union until mid April, did not discuss the matter with counsel until May 1, and never mentioned it to the employees in the interim" (J. A. 90). Here the Board discredits that very testimony in which Herbert Byer denies knowledge of union activities. Yet, when it comes to Baker, the Board fails to find such knowledge. Here the Board denies company knowledge when the company itself admitted to employees,

through supervisory personnel, that it "knew who had signed union cards" (J. A. 97). The inconsistency of such a result is indeed striking.

On its final painful step in dismissing this particular 8(a)(3) allegation, the Board candidly admitted that Herbert Byer had professed knowledge of Baker's union activities, but nevertheless chose to lean its decision on the peg that "the company did not discharge outright any other union members" (J. A. 97). Can there be a meaningful distinction in terms of company motivation between discharging an employee "outright" for his union activities and discharging him "constructively"? We think not. The Board did find that Greer had been "constructively" discharged, but refused to find that the company would be sufficiently motivated to discharge Baker "outright." In so holding, the Board not only grasps for straws in defiance of logic, but overlooks the fact that whereas Greer, who had been an over-the-road truck driver, was susceptible to constructive discharge by being placed in dirtier and generally less desirable jobs, Baker was not. He was a specialist—a burner, whose skill and qualifications could not reasonably justify his being placed on jobs which called for dumping or raking cans and the like. The only method the company could have used to force Baker's exit was to threaten him. This Herbert Byer tried to do, but failed. The only alternative remaining was to fire Baker outright. This the company finally did on July 24, 1964.

### CONCLUSION.

In *Universal Camera Corporation v. N. L. R. B.*, 340 U. S. 474, 488, 490, the Supreme Court said:

[T]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight. . . . Congress has merely made it clear

that on review a court is not barred from setting aside a Board decision when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the Board's view. . . . Courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. . . . Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds.

The Pefitioner in Case No. 18,682 simply contends that in this case the Court cannot conscientiously find substantial support in the record for the Board's conclusion with respect to the discharge of Robert Baker. The portion of the Board's decision and order which embraces said conclusion should be set aside.

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